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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~222.~~ 32

PALMER C. SMITH AND JOB R. REMICK, ADMINISTRATORS OF RENICK HUSTON, DECEASED, AND EDWARD J. VANMETER, ADMINISTRATOR OF THOMAS T. RENICK, DECEASED, APPELLANTS,

VS.

THE FIRST NATIONAL BANK OF WESTBORO', MASS., JOEL D. HARVEY, HENRY H. PORTER, WILLIAM H. FERRY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 11, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 222.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Monday, the thirty-first day of July, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the 101st year.

WILLIAM H. BRADLEY, *Clerk.*

PALMER C. SMITH AND JOB R. RENICK, administrators de bonis non of the estate of Renick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, Benjamin F. Renick, as executor of Thomas T. Renick, deceased, the First National Bank of Westboro', Massachusetts, Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.
} In chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss :*

Be it remembered that on the twenty-first day of June, A. D.
2 1876, came said defendants, by Mess'rs Goudy, Chandler and Skinner, their solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, their bond for costs, and at the same time filed a transcript of the record of the proceedings had in the superior court of Cook County, in the State of Illinois, in said-entitled cause, which said bond for costs and transcript are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss :

Circuit court, term A. D. 1876. In chancery.

PALMER C. SMITH ET AL.
vs.
CHARLES C. BONNEY, THE FIRST NATIONAL Bank of Westborough.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the defendant, First National Bank of Westborough, of any costs ordered or adjudged to be paid by it, we hereby agree and stipulate that execution may issue against our property for any costs taxed against it. Dated this 21st day of June, A. D. 1876.

GOUDY, CHANDLER AND SKINNER.

(Endorsed :) Filed June 21st, A. D. 1876. W'm H. Bradley, clerk.

3 UNITED STATES OF AMERICA:

STATE OF ILLINOIS,
County of Cook, ss:

Pleas before the honorable Samuel M. Moore, one of the judges of the superior court of Cook County, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook County begun and holden at the court-house in the city of Chicago, in said county and State, on the first Monday, being the first day of May, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the one hundredth.

Present, the honorable Samuel M. Moore, judge of the superior court of Cook County; Charles H. Reed, prosecuting attorney; Francis Agnew, sheriff of Cook County.

Attest:

JOHN J. HEALY, *Clerk.*

Be it remembered that heretofore, to wit, on the third day of February, in the year of our Lord one thousand eight hundred and 4 seventy-six, Palmer C. Smith et al., by Miller and Frost, their solicitors, filed in the office of the clerk of the superior court of Cook County their certain bill of complaint and bond for costs, which are in the words and figures following, to wit:

Superior court of Cook County, for the March term, A. D. 1876.

THE STATE OF ILLINOIS,
Cook County, ss:

To the honorable judges of the superior court of Cook County, in chancery sitting:

Humbly complaining, show unto your honors Palmer C. Smith and Job R. Remick, of the State of Ohio, administrators de bonis non of the estate of Remick Huston, deceased, with the will annexed, that Remick Huston departed this life in the month of February, A. D. 1864, at his then residence in Pickaway County, Ohio, leaving his last will and testament, a copy of which is hereto annexed and prayed to be taken as a part hereof, and marked "Complainants' Exhibit A"; that said will was duly probated in said county of Pickaway and letters testamentary duly issued by the probate court of Pickaway County aforesaid 5 on or about the 12th day of February, A. D. 1864, to Thomas T. Remick, executor, named in said will as executor of said estate, and the said Thomas T. Remick duly qualified and entered upon his office as executor of said estate.

That afterwards, on or about the 7th day of August, A. D. 1873, said Thomas T. Remick departed this life in the county of Pickaway, Ohio, his then place of residence, leaving his last will and testament, which was duly probated in said county, and letters testamentary upon his estate were duly issued by the probate court of said county to Benjamin F. Remick, as executor of his estate, on or about the day of August, A. D. 1873. And the said Benjamin duly qualified and entered upon the duties of his office as such executor.

Your orators further show unto your honors that on or about the fifth day of September, A. D. 1873, your orators were duly appointed by the probate court of said county of Pickaway as administrators de bonis

non, with the will annexed, of the estate of said Remick Huston, a copy
of which letters are hereto annexed, marked "Complainants' Exhibit B,"
6 and prayed to be taken as a part hereof, and that your
orators have duly qualified and entered upon the duties of their
office as such administrators.

And your orators would further show unto your honors that the said Remick Huston was at the time of his death, and for many years had been, the owner in fee of the following-described real estate situated in the county of Cook and State of Illinois, to wit: the west half W. ½ of the southwest quarter S. W. ¼ of section number ten (10), township number thirty-nine (39), range thirteen (R. 13) east of the third (3d) principal meridian; that he had for many years employed Charles C. Bonney and J. Edwards Fay, doing business in the city of Chicago as copartners under the firm name of Bonney, Fay, as his attorneys at law, respecting said lands and real estate, and said Bonney and Fay well knew of the death of said Remick Huston, and that he was at the time of his decease the owner of said land above described

Your orators would further show unto your honors that said Thomas
T. Remick, after said letter testamentary were issued to him,
7 employed said Bonney and Fay as the attorneys of said estate of
Remick Huston in respect to said land, and while they were so
employed and acting as said attorneys for said estate said land was sold at a judicial sale and the apparent legal title thereto became vested in your orator, Job R. Remick, but the said Job R. Remick held said title in trust for the said estate of Remick Huston, and it became and was well known to said Bonney and Fay that said Job R. Remick had no beneficial interest in said land, but simply held the legal title thereto for the purpose of promoting a sale and conveyance of the same, and that the beneficial interest and the complete ownership of the beneficial interest of the estate therein belonged to said estate of Remick Huston.

Your orators would further show unto your honors that Charles W. Griggs afterwards entered into a copartnership with said Bonney and Fay in the practice of the law in the city of Chicago, and therein said business was thereafter prosecuted in the firm name of Bonney, Fay
and Griggs, and said firm therefore became, and thereafter
8 continued to be, the legal advisers of said estate of Remick Huston.

Your orators would further show unto your honors that afterwards, and on or about the 15th day of July, A. D. 1872, the said Thomas T. Remick, as executor of said estate of Remick Huston, effected a sale of said land to one Joel D. Harvey for the sum of $157,000, $39,250 cash and the balance in equal payments in one, two, and three years, with interest, and ct., from said 15th day of July; said deferred payments to be secured by the promissory notes of said Joel D. Harvey and a trust-deed or mortgage of said lands. That said sale was consummated by a conveyance of said lands by said Job R. Remick to said Joel D. Harvey, the payment of said cash payment by said Harvey, and the execution of said promissory notes by said Harvey of $39,250 each, payable in one, two, and three years from date, to wit, the said 15th day of July, and payable to the said Thomas T. Remick, and the execution of a trust-deed of said premises by said Joel D. Harvey to said J. Edwards
Fay, as trustee, to secure the payment of said notes, and said
9 notes and trust-deed were by said Thomas T. Remick left in the
custody and possession of said Bonney, Fay and Griggs, as attorneys of said estate of Remick Huston, and said trust-deed or mortgage still remains in their possession. And said notes and trust-deed became

and were, and the said Bonney, Fay and Griggs well knew that the same became and were, the sole property of said estate of Remick Huston; and your orators expressly charge that they held the same for said estate, and it became and was their duty to account for the same or any proceeds that might be realized therefrom to the representatives of said estate.

And your orators would further show unto your honors that after their appointment as administrators with the will annexed of said estate of Remick Huston, they advised said Bonney, Fay and Griggs of their appointment as such administrators, continued their appointment as attorneys of said estate, and frequently advised with them as attorneys of said estate respecting said notes.

10 Your orators would further show unto your honors that after their appointment as aforesaid they were importuned by parties interested in the firm of B. F. Remick and Co. of Canton, Ohio, and composed of Benjamin F. Remick and Peter G. Classen, and carrying on the business of manufacturing chromatic printing presses, to allow some portion of the funds belonging to the estate of said Remick Huston to be loaned to said firm or invested in said business, and your orators peremptorily refused to allow such application or use of said funds or any portion thereof; and your orators took the precaution of distinctly saying to said Bonney, Fay and Griggs, the attorneys of said estate, and while they held said notes, that no portion of the funds belonging to said estate would be permitted by your orators to go into said firm or said business or into the hands of said Benjamin F. Remick, but that the same must be paid and accounted for to your orators as administrators of said estate.

Your orators further show unto your honors that notwithstanding
this, and without in any manner consulting your orators or either
11 of them in the premises, the said Bonney, Fay and Griggs did,
on or about the day of June, A. D. 1875, deliver one of said promissory notes, being for the sum of $39,250, due July 15th, 1875, to said Benjamin F. Remick for the purpose of enabling the said Remick to use the same for the benefit of the firm of B. F. Remick and Co., and the said Remick thereupon and without any consideration therefor endorsed said note as executor of said Thomas T. Remick, deceased, to said B. F. Remick and Co., and at the same time endorsed the firm name of B. F. Remick and Co. upon said note, and delivered the same so endorsed to the First National Bank of Westboro', in Worcester County, Massachusetts, and pledged the same as collateral security to said First National Bank of Westboro', Massachusetts, for and on account of some claim in favor of said First National Bank of Westboro', Massachusetts, but the precise terms of said pledge or transfer are to your orators unknown, which said note is now, as your orators are informed and
12 believe and charge the fact to be, held by William C. Goudy and
George Chandler, doing business in Chicago under the firm name of Goudy and Chandler, as attorneys and agents, for said First National Bank of Westboro', Massachusetts.

And your orators further show, and charge the fact to be, that at the time of the delivery of said note to said B. F. Remick and Co. for the purpose aforesaid, said firm of B. F. Remick and Co. was utterly insolvent, and this fact was then well known to said Bonney, Fay and Griggs and said B. F. Remick; and your orators expressly charge that said Benjaman F. Remick, who endorsed said note as executor of Thomas T. Remick, is the leading member of the said firm of B. F. Remick and Co., to whom the same was so endorsed and for whose benefit the same was

used by placing the same with said First National Bank of Westboro', Massachusetts, as aforesaid, and that this fact was well known to said First National Bank of Westboro', Massachusetts, at the time it received said note as aforesaid; and your orators expressly charge that said First National Bank of Westboro', Massachusetts, are not
13 bona fide holders of said note.

And, upon information and belief, your orators aver that at the time of said transfer and endorsement said First National Bank of Westboro', Massachusetts, had notice of the fact that said note did next belong to said firm of B. F. Remick and Co., and that it was then being wrongfully transferred to said First National Bank of Westboro', Massachusetts, and said bank has no right to hold the *the* same as against your orators, nor even as against said estate of Thomas T. Remick, deceased, and that any assertion of title thereto by the said First National Bank of Westboro', Massachusetts, is a fraud upon your orators and upon said estate of which your orators are administrators as aforesaid.

Your orators would further show unto your honors that, as they are informed and believe, some time in the month of November last past, said Benjamin F. Remick executed to said J. Edwards Fay, member of said firm of Bonney, Fay and Griggs, and to whom, as your ora-
14 tors believe, the legal business performed by said firm was principally left, so far as the *so far as the* same has been rendered in behalf of said estate of Remick Huston, and of your orators as the legal representatives of said estate, his promissary note for $50,000, and payable one day after date, and at the same time executed to him a trust deed or mortgage upon some fourteen hundred acres of land in Pickaway County, in the State of Ohio, which deed was duly filed for record and recorded in said county, to secure the payment of said note, which said note is still in the possession, as your orators are informed and believe, of said Fay, or of said Bonney, Fay and Griggs.

And your orators charge, upon information and belief, that said note and trust-deed or mortgage were given by said Benjamin F. Remick to said Fay as security and indemnity to said firm of Bonney, Fay and Griggs, amongst other things, for any loss or damage which they might sustain by reason of the transfer of the note aforesaid to said First National Bank of Westboro', and by the payment of any
15 funds of said estate theretofore made by them or either of them to said Benjamin F. Remick.

And your orators would further show unto your honors that they did not learn of the transfers of said promissory note as aforesaid, and the delivery of the same to said First National Bank of Westboro' as aforesaid, until about the 29th day of January, A. D. 1876, nor of the particular manner of said transfer, until about the time of the preparation of this bill of complaint; that as soon as they learned that said note had been placed beyond their control, your orator Palmer C. Smith, as soon as he could do so, came to the city of Chicago, and called upon said Bonney, Fay and Griggs, and particularly upon said Fay, for an explanation of said transfer of said note, but could obtain no explanation for his conduct in the premises other than that he supposed said Benjamin F. Remick was perfectly good, and that said estate of Remick Huston would not ultimately lose anything by said transaction, but not pretending that he did not all the while well know that said
16 note belonged to the funds of said estate of Remick Huston or that he had any authority from your orators or any person entitled to said funds to divert the same.

And your orators, upon information and belief, charge the truth to be that all the members of said firm of B. F. Remick & Co., including said Benjamin F. Remick, were at the time of the wrongful transfer of said promissory note and the giving of said note of ($50,000) fifty thousand dollars, and the trust-deed or mortgage to secure the payment of the same, were insolvent, and your orators aver that they are still insolvent and that they are unable to obtain possession of said promissory note so wrongfully transferred as aforesaid without the interposition and aid of this honorable court, and your orators greatly fear that unless restrained by the injunction of this honorable court, said Goudy and Chandler may part with the possession of said promissory note for thirty-nine thousand two hundred and fifty (39,250) dollars, and the same may pass beyond the reach and jurisdiction of this honorable court, and that the said J. Edwards Fay will also, unless restrained by the
17 injunction of this honorable court, part with the possession of the
said note for fifty thousand ($50,000) dollars and the mortgage or trust-deed given to secure the same, and that the same will be placed beyond the jurisdiction of this honorable court, or that he will surrender the same to the said Benjamin F. Remick. To the end therefore that the said Charles C. Bonney, J. Edwards Fay, and Charles W. Griggs composing the firm of Bonney, Fay and Griggs, Benjamin F. Remick and Benjamin F. Remick, as executor of said Thomas T. Remick, the First National Bank of Westboro', in Worcester County, in the State of Massachusetts, Joel D. Harvey, and William C. Goudy, and George Chandler, comprising the firm of Goudy and Chandler, may be made defendants hereto and well and truly answer the premises, their answers under oath being hereby waived, in pursuance of the statute in such cases made and provided, and that said promissory note for $39,250 and that the trust deed given to secure the payment of the same may by the final decree of this honorable court be declared to be the prop-
18 erty of your orators and to be delivered and surrendered to your
orators by the present holder thereof, and that the said Joel D. Harvey be decreed to pay said promissory note and the interest thereof to your orators, and that he be perpetually enjoined from paying the same to any other person or party, and that your orators may have any other and further relief as to your honors shall seem meet. May it please your honors to grant unto your orators in the mean time a preliminary writ of injunction to be issued out of and under the seal of this honorable court directed to the said Charles C. Bonney, J. Edwards Fay, and Charles W. Griggs, composing said firm of Bonney, Fay and Griggs, and to the said William C. Goudy and George Chandler, composing said firm of Goudy and Chandler, and said First National Bank of Westboro,' commanding and enjoining said Bonney, Fay and Griggs to desist and refrain from disposing of said trust-deed given to secure said note of said $39,250 and said note of $50,000 or the mortgage or trust-
19 deed given to secure the same, or from in any manner interfering
with the same, until the final decree of this court herein, and commanding and enjoining the said Goudy and Chandler from disposing of said note for $39,250 or parting with the possession thereof or in any manner interfering with the same until the final decree of this court herein. And that the said First National Bank of Westboro' may be restrained and enjoined from parting with said note of $39,250, and that said William C. Goudy and George Chandler composing, said firm of Goudy and Chandler, and said First National Bank of Westboro' may be directed to deliver the said note to your orators, and that upon the final hearing of this cause that said injunction may be made perpetual.

And may it also please your honors to grant unto your orators a writ of subpœna, to be directed to each of the above-named defendants, and commanding them and each of them to be and appear before this honorable court by a day to be therein named and answer the premises and abide by such order and decree as to your honors shall seem meet,
20 and your orators will ever pray, etc.

PALMER C. SMITH.
JOB R. REMICK,
Per P. C. SMITH.

MILLER AND FROST,
Sol. and Counsel for Complainants.

EXHIBIT A.

I, Remick Huston, of the county of Pickaway, and State of Ohio, lieutenant O. V. I., do make and publish this my last will and testament, hereby revoking all former wills by me made.

Item 1st. I give and bequeath to Miss Anna Marsh, my adopted mother, the sum of five thousand dollars ($5,000.)

Item 2d. I give and devise to Susan Huston, Letitia Huston, and Rachel Huston the sum of five hundred dollars each.

Item 3d. I give and devise the residue of my estate, real and personal, to Thomas T. Remick, M'r's Mary Gregg, and M'r's Lavinia Remick in equal portions. The two shares to Thomas T. Remick and M'r's Mary Gregg, them, their heirs and assigns forever. And the portion to M'r's Lavinia Remick, to her during the period of her natural life, and at her death to the children of my late uncle and guardian, Jonathan Remick, their heirs and assigns forever.

21 Item 4th. I do hereby nominate and appoint Thomas T. Remick executor of this my last will and testament, and I hereby authorize him to sell any real estate, wherever situated, either at public or private sale, for cash or upon such terms of credit as he may think best, and to execute deeds of conveyance to purchasers for all my said real estate which he may sell, and to execute deeds for real estate sold by me in case where deeds may not have been made.

In testimony whereof I have hereunto set my hand and seal this 10th day of Nov., 1862.

REMICK HUSTON. [SEAL.]

P. C. SMITH.
C. B. CROUSE.

Complainants' Exhibit B.

THE STATE OF OHIO,
Pickaway County, ss:

To all whom these presents shall come, greeting:

Know ye that at a probate court holden within and for the county aforesaid, on the fifth day of September, A. D. 1873, P. C. Smith and Job R. Remick was duly appointed by said court administrators, with the will annexed, of the estate of Remick Huston, late of said
22 county, deceased, and whereas the said P. C. Smith and Job R. Remick, having appeared before said court, accepted said appointment and entered into bond, with security as required by said court, these are, therefore, to authorize and empower the said P. C. Smith and Job R. Remick to administer according to law all and singular the goods, chattels, money, rights, and credits of said deceased,

and also the proceeds of all the real estate of said deceased, which they may be authorized to sell for the payment of the debts of said deceased; to collect all the debts due to and pay those due from the estate of said deceased, so far as its means will extend and the law require, and to do all things which may be lawfully done in the premises to effect the just and speedy settlement of said estate.

In testimony whereof the seal of said court is hereunto affixed.

Witness James Taylor, judge of said court, this fifth day of September, A. D. 1873.

JAMES TAYLOR, [SEAL.]
Probate Judge.

23 THE STATE OF ILLINOIS,
Cook County, ss:

Palmer C. Smith, being duly sworn, deposes and says that he is one of the complainants named in the foregoing bill by him subscribed, and that he has read said bill and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated upon information and belief, and that as to those matters he believes it to be true.

PALMER C. SMITH.

Sworn to and subscribed before me this 2nd day of February, A. D. 1876.

[SEAL.] HENRY B. MASON, *N. P.*

STATE OF ILLINOIS,
Cook County, ss:

Superior court of Cook County, in chancery.

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, the First National Bank of Westboro', Massachusetts, Joel D.
24 Harvey, William C. Goudy and George Chandler.

We do hereby enter ourselves security for all costs which may accrue in the above cause.

MILLER AND FROST.

Dated this 3d day of February, 1876.

And thereupon, to wit, on the day and year last aforesaid, there issued out of said clerk's office the people's certain writ of summons, which said writ, together with the returns of the sheriff thereon endorsed, is in the words and figures following, to wit:

STATE OF ILLINOIS,
Cook County, ss:

The people of the State of Illinois to the sheriff of Cook County, greeting:

We command that you summon Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, the First National Bank of Westboro', Massachusetts, Joel D. Harvey, William C. Goudy, and George Chandler, if they shall be found in your county, personally to be and appear before the superior court of Cook County, on the first day of 25 the term thereof to be held at the court-house in Chicago, in said Cook County, on the first Monday of March next, to answer unto Palmer C. Smith and Job R. Remick, administrators de bonis non with will annexed of Remick Huston, deceased, in their certain bill of complaint filed in said court, on the chancery side thereof; and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John J. Healy, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 3d day of February, A. D. 1876.

[SEAL.] JOHN J. HEALY, *Clerk.*

(Endorsed:)

Served the within writ on the within-named Charles C. Bonney, by delivering to him a true copy thereof this 5th day of February, 1876. Also served the within writ on the within-named J. Edwards Fay, Charles W. Griggs, Joel D. Harvey, William C. Goudy, and George Chandler, by delivering to each of them a true copy thereof, this 3 day of February, 1876. All the other within-named defendants are not found in my county.

FRANCIS AGNEW,
Sheriff,
By C. G. PUSHECK,
Deputy.

26 And afterwards, to wit, on the fourth day of February, in the year last aforesaid, there was filed in said clerk's office a certain affidavit, which is in the words and figures following, to wit:

Superior court of Cook County, in chancery.

STATE OF ILLINOIS,
Cook County, ss:

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, the First National Bank of Westboro', Massachusetts, Joel D. Harvey, William C. Goudy, and George Chandler.
} In chancery.

Henry G. Miller, being duly sworn, upon oath deposes and says that he is one of the solicitors for the complainants in the above entitled cause; that Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, and the First National Bank of Westboro', Massachusetts, defendants herein, reside out of this State, and that said Benjamin F. Remick and Benjamin F. Remick, executor 27 of Thomas T. Remick, deceased, reside in Canton, Ohio, and that the place of residence of the First National Bank of Westboro', Massachusetts, is Westboro', Massachusetts.

HENRY G. MILLER.

Subscribed and sworn to before me this 4th day of February, A. D. 1876.

JOHN J. HEALY, *Clerk.*

And afterwards, to wit, on the 9th day of February, in the year last aforesaid, William C. Goudy et al., defendants, filed in said clerk's office their certain answer, which is in the words and figures following, to wit:

Superior court of Cook County, in chancery.

STATE OF ILLINOIS,
County of Cook :

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with the will annexed, of Remick Huston,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, the First National Bank of Westboro', Massachusetts, Joel D. Harvey, William C. Goudy, and George Chandler.

28 The joint and several answer of William C. Goudy and George Chandler, two of the defendants, to the bill of complaint of Palmer C. Smith and Job R. Remick, administrators, and ct.

These defendants, reserving for themselves all benefit of exception to the errors and insufficiencies of said bill of complaint, for answer thereto, or to so much thereof as they deem it material for them to make answer unto, say that they have no interest of any kind or nature in the matters stated in said bill of complaint, and they further state that they have not in their possession the notes of the said Joel D. Harvey, described in said bill, or either of them, and have no control thereof in any way, and had no such possession or control thereof at the time of filing said bill, and they state that the only connection they have ever had with either of said notes was this: that the defendant Goudy, at or before the time when one of said notes was transferred to James C. Ayer and Co., made an examination of the title to the property described in the deed of trust securing said notes, and an examination of 29 the will of Thomas T. Remick, at the request of said James C. Ayer and Co., and said Goudy received said note, and at once transmitted the same to said James C. Ayer and Co., and since then these defendants have had no possession or control of the same. And they further say that they never had anything to do with the note transferred to the First National Bank of Westboro', and never had possession thereof, and never acted as *as* attorney or agent for said bank.

And now, having sufficiently answered, these defendants pray to be hence dismissed, with their costs, etc.

WILLIAM C. GOUDY.
GEORGE CHANDLER.

GOUDY and CHANDLER, *Sol. for S.*

STATE OF ILLINOIS,
County of Cook, ss:

William C. Goudy, being duly sworn, says that he is one of the above defendants, and that he has read the foregoing answer, and understands its contents, and that the same is true in substance and in fact.

W. C. GOUDY.

Subscribed and sworn to this 9th day of February, A. D. 1876.
[SEAL.] GEORGE CHANDLER, *N. P.*

30 Upon the filing of the within answer, we consent that the bill be dismissed as to Mess'rs Goudy, Chandler and Co.

MILLER AND FROST,
Complainants' Sols.

And thereupon, to wit, on the day and year last aforesaid, the same being one of the days of the February term of said court, the following among other proceedings were had in said court, and entered of record, to wit:

PALMER C. SMITH ET AL.
vs. } Bill. 3519, 60747.
CHARLES C. BONNEY ET AL.

On motion of Miller and Frost, complainants' solicitors, it is ordered by the court that this suit be, and the same is hereby, dismissed at the complainants' costs as to the defendants William C. Goudy and George Chandler.

And afterwards, to wit, on the eleventh day of February, in the year last aforesaid, there was filed in said clerk's office a certain certificate, which is in words and figures as follows, to wit:

31 STATE OF ILLINOIS,
County of Cook, ss:

Superior court of Cook County.

PALMER C. SMITH ET AL.
vs.
CHARLES C. BONNEY ET AL.

I, John J. Healy, clerk of the superior court of Cook County, in and for said county, in the State of Illinois, do hereby certify that on the 11th day of February, A. D. 1876, I sent by mail a notice, a copy of which is hereto attached, marked "Exhibit A," to each of the following defendants, and addressed as follows:

One copy to the First National Bank of Westboro', Massachusetts, Westboro', Massachusetts.

One copy to Benjamin F. Remick, executor of Thomas T. Remick, deceased, Canton, Ohio.

One copy to Benjamin F. Remick, Canton, Ohio.

JOHN J. HEALY, *Clerk.*

Chancery notice.

STATE OF ILLINOIS,
County of Cook, ss:

Superior court of Cook County. March term, A. D. 1876. In chancery.

Chancery notice.

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, deceased.
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Rem-
32 ick; Benjamin F. Remick, executor of Thomas P. Remick, deceased; The First National Bank of Westboro, Massachusetts; Joel D. Harvey, William C. Goudy, and George Chandler.

Affidavit of the non-residence of Benjamin F. Remick; Benjamin F. Remick, executor of Thomas T. Remick, deceased; and the First National Bank of Westboro, Massachusetts, defendants above named, having been filed in the office of the clerk of the superior court of Cook County, notice is hereby given to the said Benjamin F. Remick; Benjamin F. Remick, executor of Thomas T. Remick, deceased; and First National Bank of Westboro, Massachusetts, that the above-named complainants heretofore filed their bill of complaint in said court, on the chancery side thereof, and that a summons thereupon issued out of said court against the above-named defendants, returnable on the first day of the term of the superior court of Cook County, to be held at the court-house in Chicago, in said Cook County, on the first Monday of March next (1876), as is by law required, and which suit is still pending.

JOHN J. HEALY, *Clerk.*

MILLER and FROST,
Compl'ts Sol'rs.

33 And afterwards, to wit, on the fourteenth day of February, in the year last aforesaid, the same being one of the days of the February term of said court, the following among other proceedings were had in said court and entered of record, to wit:

PALMER C. SMITH ET AL
vs. Bill 3519, 60747.
CHARLES C. BONNEY ET AL.

This day again come the complainants to this suit, by their solicitors aforesaid, and thereupon, on motion of said complainants, leave is given them by the court to amend the bill of complaint filed in the cause.

And thereupon, to wit, on the day and year last aforesaid, said complainants, by their solicitors aforesaid, filed in said clerk's office their certain amendment to bill, which are in the words and figures following, to wit:

Proposed amendments to complainants' bill of complaint.

Superior court of Cook County. In chancery.

STATE OF ILLINOIS,
Cook County, *ss:*

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick;
34 Benjamin F. Remick, executor of Thomas T. Remick, deceased; The First National Bank of Westboro, Massachusetts; Joel D. Harvey, William C. Goudy, and George Chandler.

1st. At the conclusion of the stating part of the bill, after the words on page of the bill, insert the following:

And your orators would further show unto your honors that after the purchase of the property first above described and the execution of a trust deed to said J. Edwards Fay to secure the payment of said promissory notes, has herein before stated, said Joel D. Harvey conveyed said property to Henry H. Porter, William H. Ferry, and James B. Goodman, as trustees of the West Chicago Land Company, a joint-stock association, and not incorporated, as your orators are informed and believe, subject to the said trust deed so given as aforesaid, and the said trustees of the said West Chicago Land Company afterwards sold, as your orators are informed and believe, the south forty acres of said eighty acres to Anthony McElroy, Edward L. Davidson, Charles B. McElroy,
35 and John J. McElroy, and pending the negotiation for the sale of said property by said trustees, and on or about the 12th of September, 1874, your orator, Palmer C. Smith, was applied to by said Joel D. Harvey and informed that the purchasers of said property, to wit, the said south forty acres, desired that the same should be subject to only one trust deed.

That the notes or obligations which they were to give for the property would be secured by a trust deed of the same, and that said notes, amounting to ninety-six thousand dollars ($96,000), would be deposited as collateral security for the payment of said two notes of $39,250 each, above mentioned, and requesting your orator to consent to the release of said south 40 acres from the operation of said trust deed to said J. Edwards Fay, and hold said last-mentioned notes in the place of the land so released and as collateral security for the payment of said two notes of $39,250 each, and also requested that your orator, or said Smith, would extend the payment of said two notes for two years, respectively.

That your orators assented to the release of said forty acres upon
36 the terms and in the manner proposed, but stated that he could

not enter into any binding contract to extend the payment of said notes as requested, but that a suit had been brought and was then pending in the State of Ohio involving said estate of Remick Huston, deceased, and that the money represented by said notes would not be required by said estate until said litigation was terminated. That he was satisfied that the said litigation would last at least during the time that said parties desired said payment to be extended, and that he would not, as the representative of said estate, press the collection of said notes until said litigation should terminate.

And your orator, said Smith, thereupon entered into an arrangement touching said matters, which was reduced to writing, signed by your orator, said Smith, as one of the administrators and as attorney for the estate of Remick Huston and Thomas T. Remick. That a copy of said arrangement is hereto annexed, marked "Complainants' Exhibit C," and prayed to be taken as a part hereof.

37 That in said writing it is expressly stated that said two notes belong to the estate of Remick Huston, deceased.

That said writing was left with and retained by the said Joel D. Harvey, and is now, as your orators are informed and believe, in his possession or in the possession of his attorneys. That said writing contains a clear and distinct statement of the title of your orators as representatives of the estate of Remick Huston, deceased, to said two notes, and for whose benefit the notes to be given by the purchasers of the land from the West Chicago Land Company should be held, in case said south 40 acres should be released as aforesaid.

Your orators would further show unto your honors that, as they are informed and believe, said trustees of the West Chicago Land Company did thereupon sell said south 40 acres of said land to Anthony McElroy, Edward L. Davidson, Charles R. McElroy, and John J. McElroy, and that the said purchasers gave to said trustees, among other things, their
twelve promissory notes for four thousand dollars each, and
38 payable July 15th, 1876, with interest, and also their twelve prom-
issory notes for four thousand dollars each, payable July 15th, 1877, and also executed a trust deed of said land so conveyed to them to George C. Campbell, esq., to secure the payment of said notes.

That the said J. Edwards Fay executed a release of said 40 acres to the said trustees of the West Chicago Land Company from the operation of said trust deed, but your orators say that the said Harvey or the said trustees of the West Chicago Land Company, instead of delivering said twenty-four promissory notes for $4,000 each to said Fay to hold as collateral security for the payment of said two notes of $39,250 each, in the place and stead of said forty acres of land so released as aforesaid, delivered the same to Benjamin F. Remick, executor of the estate of Thomas T. Remick, deceased, and took his receipt therefor, by the said J. Edwards Fay as his attorney, dated July 21st, 1875.

And your orators aver that they never consented in any way or
39 manner to the delivery of said notes to said Benjamin F. Rem-
ick, or to the placing of the same within his reach or control, and that the delivery of said notes in that manner was in fraud of your orators' rights in the premises.

And your orators further allege, that as they are informed and believe, a portion of said notes (but how many your orators are unable to state) were delivered to said The First National Bank of Westboro', Massachusetts, in connection with said note of $39,250 to accompany the same and as collateral security for the payment thereof.

And your orators aver that the said The First National Bank of Westboro', Massachusetts, are not bona-fide holders of said notes, and that the same should be delivered up to your orators, together with said note for $39,250 aforesaid, and remain as collateral security for the payment thereof and in the place of the land so released from said trust deed, as hereinbefore stated.

2d. In the clause naming the defendants to said bill insert the following names on page , after the words : Henry H. Porter, William
40 H. Ferry, James B. Goodman, trustees of the West Chicago
Land Company; George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

3d. In the prayer for relief, on page , after the words , insert the following clause: "And that the said Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy may be enjoined from paying said twenty-four promissory notes, or either of them, to the said The First National Bank of Westboro', Massachusetts, or to any other person than your orators, and under the order and direction of this honorable court, and that the said George C. Campbell be enjoined from releasing any portion of the land conveyed to him to secure the payment of said notes otherwise than under the direction of this honorable court, and that the said Henry H. Porter, William H. Ferry, and James B. Goodman may likewise be enjoined from interfering with said promissory notes, or any of them, and that the said Charles E.
41 Bonney, J. Edwards Fay, and Charles W. Griggs may also be enjoined
from interfering or in any manner intermeddling with said promissory notes, except under the order and direction of this honorable court."

PALMER C. SMITH.
JOB R. REMICK,
By P. C. SMITH.

MILLER and FROST,
Sol's for Comp'ts.

STATE OF OHIO,
Pickaway County, ss:

Palmer C. Smith, being duly sworn, deposes and says that he is one of the complainants in the above-entitled cause; that he has read the foregoing proposed amendments to the bill of complaint filed therein; that he has learned of said facts since the commencement of this suit; that the said proposed amendments are true, except as to matters therein stated upon information and belief, and that as to those matters he believes them to be true.

PALMER C. SMITH.

Subscribed and sworn to before me this 12th day of February, 1876.
[SEAL.] W. F. HOWST, *N. P.*
Fee, 40 c., paid by pl.

42 *Complainants' Exhibit C.*

Whereas Joel D. Harvey did heretofore execute, among other things, two promissory notes, bearing date July 15th, 1872, for the sum of ($39,250) thirty-nine thousand two hundred and fifty dollars each, payable respectively to the order of Thomas T. Remick in two and three years after the date thereof, which notes were given as a part consideration for the sale of the W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of section 10, 39, 13 (except so much as had been before conveyed and was used for a railroad), situate

in the county of Cook and State of Illinois, and which notes are now the property of the estate of Remick Huston, deceased; and whereas there is a suit now pending in the court of common pleas of Pickaway County, Ohio, affecting the property of said estate; and whereas it is desirable to the interest of said estate that said money should be invested until the termination of said suit; and whereas the West Chicago Land Company have assumed the payment of the said notes, together with the interest thereon, and the said West Chicago Land Company desires a postponement of the payment of both
43 the said notes for a time:

Now, therefore, I, P. C. Smith, of the said county of Pickaway and State of Ohio, one of the administrators de bonis non with the will annexed of Remick Huston, and att'y for said estate, do hereby say that I will not press the payment of said two notes until such time as I shall require the said money to be paid by reason of the termination of the said suit. The extension of the time of the *of the* payment of said two notes shall not in any event be for a time exceeding two years upon each of said notes, from the time when each of the said notes respectively become due and payable by the written terms thereof. And, further, the said maker of said notes, or the said West Chicago Land Company, are to pay interest upon the amount of said notes at the rate of eight per cent. per annum, payable annually. And I hereby consent that the trustees in the trust-deed securing the payment of the said notes may release therefrom the south forty acres from the said trust, upon the said Harvey or the said West Chicago Land Company furnish-
44 ing to him, to hold as collateral security for the payment of said
notes in addition to the security of said trust-deed upon the residue of said tract of land in said trust-deed conveyed, notes (together with the deed of trust securing the same) of the individuals with whom the said West Chicago Land Company have made a contract for the sale of the said south forty acres, or thereabouts, for the sum of ninety-six thousand ($96,000) dollars to become due, one-half July 15th, 1876, and one-half July 15th, 1877, with interest payable annually at the rate of 8 per cent. per annum, secured by a deed or deeds of trust upon the said land, and shall furnish to said trustee for examination a proper abstract of title showing a good title in said individuals, the makers of said collateral notes, at the time of their being so given to said trustee and the release being made. It is understood that the said Joel D. Harvey, or said West Chicago Land Co., upon the payment of all unpaid purchase-money for said premises, together with all the ac-
45 crued and accruing interest thereon, except the principal of the
two notes above mentioned, are entitled to and shall have a release of 20 acres of said lands from the said trust-deed in addition to said forty acres to be released upon the conditions hereinabove set forth, as provided for in said deed of trust made by said Joel D. Harvey.

September 12th, 1874.

PALMER C. SMITH,
One of the Administrators and Att'y for the
Estate of Remick and Thomas Remick.

And thereupon, to wit, on the day and year last aforesaid, there issued out of said clerk's office the people's certain writ of summons, which said writ, together with the return of the sheriff endorsed thereon, is in the words and figures following, to wit:

STATE OF ILLINOIS,
Cook County, *ss* :

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon Henry H. Porter, William H.
Ferry, James B. Goodman, trustees of the West Chicago Land Company; George C. Campbell, Anthony McElroy, Edward L. David-
46 son, Charles B. McElroy, and John J. McElroy, if they shall be
found in your county, personally to be and appear before the superior court of Cook County on the first day of the term thereof, to be held at the court-house in Chicago, in said Cook County, on the first Monday of March next, to answer unto Palmer C. Smith and Job R. Remick, administrators de bonis non with the will annexed of Remick Huston, deceased, in their certain amended bill of complaint filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John J. Healy, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 14th day of February, A. D. 1876.

[SEAL.] JOHN J. HEALY, *Clerk.*

Served the within writ on the within-named James B. Goodman by delivering a copy thereof to him the 24th day of Feb'y, 1876; also served the same on Henry H. Porter by delivering a copy thereof to W.
A. Carpenter, a member of his family upwards of the age of ten
47 years, at the usual place of abode of said defendant, informing
him of the contents thereof, the 4th day of March, 1876; the other defendants not found in my county this 6th day of March, 1876.

FRANCIS AGNEW, *Sheriff*,
By GUSTAV A. KARN, *Deputy*.

$2.00 paid.

And afterwards, to wit, on the 16th day of February, in the year last aforesaid, there was filed in said clerk's office a certain affidavit, which is in the words and figures following, to wit:

STATE OF ILLINOIS,
Cook County, *ss* :

Superior court of Cook County. In chancery.

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non with will annexed of Remick Huston, deceased,

vs.

CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, dec'd; The First National Bank of Westboro', Massachusetts; Joel D. Harvey, and Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company; George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

48 Henry G. Miller, being duly sworn, upon oath deposes and says

that he is one of the attorneys for the complainants in the above-entitled cause, and that Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, defendants in the above cause, reside out of this State, and that their place of residence is Springfield, Kentucky.

HENRY G. MILLER·

Subscribed and sworn to before me this 16th day of February, A. D. 1876.

[SEAL.] HENRY B. MASON, *N. P.*

And afterwards, to wit, on the twenty-third day of February, in the year last aforesaid, there was filed in said clerk's office a certain certificate, which is in the words and figures following, to wit:

STATE OF ILLINOIS,
County of Cook, ss:

Superior court of Cook County.

PALMER C. SMITH ET AL.
vs.
CHARLES B. BONNEY ET AL.

I, John J. Healy, clerk of the superior court of Cook County, in and
for said county, in the State of Illinois, do hereby certify that on
49 the 23d day of February, A. D. 1876, I sent by mail a notice, a
copy of which is hereto attached, marked "Exhibit A," to each of
the following defendants, and addressed as follows:

One copy to Edward L. Davidson,	Springfield,	Kentucky.
One copy to Charles B. McElroy,	"	"
One copy to Anthony McElroy,	"	"
One copy to John J. McElroy,	"	"

JOHN J. HEBLY, *Clerk.*

Chancery notice.

STATE OF ILLINOIS, *ss:*
County of Cook, ss:

Superior court of Cook County, March term, A. D. 1876. In chancery.

PALMER C. SMITH AND JOB R. REMICK, ADMINistrators de bonis non with will annexed of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased; The First National Bank of Westboro', Massachusetts; Joel D. Harvey, and Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company; George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

Affidavit of the non-residence of Anthony McElroy, Edward L.

50 Davidson, Charles B. McElroy, and John J. McElroy, defendants above named, having been filed in the office of the clerk of the superior court of Cook County, notice is hereby given to the said Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy that the above-named complainants heretofore filed their bill of complaint in said court, on the chancery side thereof, and that a summons thereupon issue out of said court against the above-named defendants, returnable on the first day of the term of the superior court of Cook County, to be held at the court-house in Chicago, in said Cook County, on the first Monday of March next (1876), as is by law required, and which writ still pending.

JOHN J. HEALY, *Clerk.*

MILLER and FROST,
Compl'ts' Sol'rs.

And afterwards, to wit, on the first day of March, in the year last aforesaid, Charles C. Bonney et al., defendants, by L. M. Paine, their solicitor, filed in said clerk's office their certain answers, which are in the words and figures following, to wit:

51 STATE OF ILLINOIS,
County of Cook, ss:

In the superior court of Cook County. In chancery.

PALMER C. SMITH AND JOB R. REMICK, administrators, etc.,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick ,exc., and etc., the First National Bank of Westboro', Massachusetts; Joel D. Harvey, and Henry H. Porter, William; H. Ferry, and James B. Goodman, trustees, and etc.; George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.
} Bill No. 60747.

The answer of said Charles C. Bonney to the bill of complaint in this case.

This respondent, saving all exceptions, and etc., and protesting the insufficiency of said bill of complaint, nevertheless, for answer thereto, so far as may be expedient or necessary, says that the material facts in relation to the matters and things stated and charged in said bill, so far as the same relate to or concern this respondent, are in substance as follows, to wit:

That this respondent did not participate in or consent to the
52 matters and things complained of in said bill, and whereof relief is sought in this suit, and is not nor hath been anywise a party thereto, nor responsible therefor; nor hath this respondent been connected therewith, except as is hereinafter set forth and alleged.

That the relation of counsel and client hath never existed between this respondent and any of the persons named in said bill of complaint, excepting only said J. Edwards Fay and the said Thomas T. Remick, as will be more particularly hereinafter set forth and alleged, and that

there is not, nor hath been in the whole course of the business men-
tioned in said bill, any matter or thing in the hands or possession or
under the control of this respondent whereof he is or can be subject to
any such relief as is sought in and by said bill of complaint. That no
such firm as that of Bonney and Fay, supposed and mentioned in said
bill, ever existed, and that no partnership for the practice of law or
otherwise ever existed between this respondent and said Fay, nor
between this respondent and said Fay together with said Charles
53 W. Griggs, but that for some years before said Fay came to oc-
cupy office-room in connection with this respondent, this re-
spondent and said Griggs were associated together for the more conven-
ient conduct of our office and the management of cases in the courts,
and that about the year 1869 said Fay first occupied office-rooms in
connection with this respondent and said Griggs, and said supposed
firm name of Bonney, Fay and Griggs came into use for certain office
and court purposes, but no partnership was formed, nor any joint ac-
counts or dealings with clients had or kept; on the contrary, it was ex-
pressly understood, stipulated, and agreed, that each of said associates
should have and retain both for the future and from the past all his
own clients, and should personally settle with his said associates for any
services rendered for his clients, and this course has always been pur-
sued under said association of Bonney, Fay and Griggs, and has been
so clear, distinct, and open that all the persons doing business with
them, or either of them, have well understood the same; each of
54 said association has kept his own accounts, settled with his own
clients, conducted his correspondence in his own individual name
with rare exceptions of no special importance, though court papers
have in general been signed for convenience of notice and attendance
in said name of Bonney, Fay and Griggs, since the same was adopted.
The fact that under said association the relation of every client was
individual to some member thereof and not jointly with them all, unless
so expressly and for special reason made, was well known and under-
stood by all of the persons named in said bill with whom any business
was transacted at said office of Bonney, Fay and Griggs after their said
association was formed.

That in the year 1864 said Thomas T. Remick came to Chicago and
employed said Fay as his general attorney, and soon thereafter as his
general business agent at Chicago, and that as such attorney and agent
said Fay had general charge of the litigation and court business
55 hereinafter mentioned in connection with this respondent, as
hereinafter set forth, and also had exclusive charge in the ab-
sence of said Remick of all matters outside of counsel and court busi-
ness, including the sale of lands, the collection of moneys, the payment
of taxes, expenses, and the like, at said county of Cook.

That upon the decease of said Thomas T. Remick, as mentioned in said bill, and the appointment of said Benjamin F. Remick his executor, said Fay became the general attorney and business agent of said Benjamin at said Chicago, and has continued to act in his separate and individual capacity as the attorney and business agent of said Benjamin to the present time, substantially as said Fay had, before the decease of said Thomas, acted for him.

That after said Thomas T. Remick had employed said J. Edwards Fay as aforesaid it was deemed necessary or expedient by them that an associate counsel should be employed to assist said Fay in the difficult and intricate matters of litigation then about to be undertaken, and thereupon the said J. Edwards Fay and Thomas T. Remick, hav-

56 ing selected and agreed upon this respondent as their preference for such associate counsel, came together to the office of this respondent and employed him as counsel to said Fay for said Remick for the litigation then pending and expected thereafter to arise in said Cook County, and it was then distinctly understood that this respondent's duties, as such counsel, would be, as they afterwards in fact were, confined to the giving of counsel when called on by said Fay or said Remick, and the chief charge and conduct of the business before the courts, said Fay acting at all times as the managing attorney therein; that the relation thus established was not changed when said Fay, under said name of Bonney, Fay and Griggs, came to occupy office-rooms with this respondent and said Griggs, but continued till the death of said Thomas, who, during the whole time, remained primarily the client of said Fay, and, in a secondary way, the client of this respondent.

That said Fay always had the exclusive charge of the papers 57 relating to the matters in controversy, and kept the same in his separate safe or vault, to which this respondent had no access, and over which he had no control. This respondent made no collections of money, and never transferred, disposed of, or held, any promissory notes or securities belonging to or growing out of the matters mentioned in said bill; nor did this respondent ever participate therein with said Fay, nor consent to and advise and such transfer or disposition as is charged in said bill, nor did this respondent have anything to do with the making or taking of any such note and mortgage for fifty thousand dollars as are mentioned in said bill, nor does this respondent know otherwise than on information that there were or are any such notes for ninety-nine thousand two hundred and fifty dollars, or any such note and mortgage for fifty thousand dollars, as are mentioned in said bill, nor were such notes, or any others of the like origin and character, ever in the possession or control of this respondent, or, so far as he 58 knows or believes, in that of said Charles W. Griggs, but the sole and exclusive custody, control, and disposition of any such notes has been, so far as said Bonney, Fay and Griggs are concerned, by said J. Edwards Fay only.

That said Smith has several times, both during the lifetime of said Thomas and during the executorship of said Benjamin, visited the office of said Bonney, Fay and Griggs to consult with said Fay, and that from such visits, and what he saw and heard during the same, and from the correspondence had by him with said Fay about the business of said Thomas, and from other sources, said Smith well knew that all the matters whereof complaint is made in said bill were exclusively in the individual charge of said Fay, and that neither this respondent or said Griggs was anywise concerned in the same.

That this respondent never received any money from or on account of the business mentioned in said bill, save such sums on his individual account as he received from said Thomas or from said Fay on 59 the direction of said Thomas, excepting in one instance, where, in the absence from Chicago of said Fay, this respondent received and disbursed a sum for taxes. And at the time of the death of said Thomas there was due and unpaid from him to this respondent a considerable sum of money on account of fees, which said Thomas had provided for the payment of out of funds to be thereafter received by said Fay, and which sum has not to this day been fully paid to this respondent, although he has often urged the payment thereof. This respondent mentions this fact to show how wholly beyond his control have been the moneys and securities involved in said bill.

That when the litigation above referred to, and which lasted for many
years and involved an extraordinary amount of care and labor, was
ended, the titles to the land from which the assets in controversy are
supposed to have been derived were vested, as this respondent was in-
formed and believes, in said Job R. Remick, and were by the con-
60 nivance of him and said Thomas sold and conveyed, and the
proceeds of such sale taken, by said Thomas, and said J. Edwards
Fay made trustee in the securities given by the purchase money, and
said securities made payable to the said Thomas, and that the subse-
quent doings of said Fay in the premises were rather in his capacity of
business agent and trustee than in the capacity of an attorney at law
in that behalf.

This respondent also says that he never received, claimed, or was en-
titled to any compensation for or on account of the services of said Fay
in or about the matters mentioned in said bill, but that all the compen-
sation ever received, claimed, or had by this respondent in or about the
matters aforesaid was for his own individual services in that behalf, and
that this respondent had no interest whatever in the sales of said lands
or the collection or disbursement of the proceeds thereof, and never
received or claimed any compensation or profit therefrom, nor had any
right so to do, nor, so far as this respondent knows or believes, did
said Griggs ever receive, claim, or have any right to any such
61 compensation, those matters being wholly out of the charge and
control of said Griggs and this respondent.

That when said titles were so vested in said Job, and the business incidental thereto completed, the principal employment of this respondent terminated, but he still remained the counsel of said Thomas, and advised him as called on till the time of his decease. But this respondent is informed and believes that said Smith was the attorney both of said Job and said Thomas in said Pickaway County when said lands were sold and conveyed and the securities therefor taken in manner aforesaid, and has continued to act as such attorneys, and since the death of said Thomas as the attorney of said Benjamin in manner above set forth.

That this respondent has no recollection of ever having seen said Re-
mick Huston, and he denies that he ever occupied any position of ac-
countability to the estate of said Remick Huston or the estate of
62 said Andrew Huston, whatever that may be, and he denies that
he ever consented to act as the attorney or legal adviser of said
Job R. Remick and Palmer C. Smith, or either of them, and he denies
that he ever acted as the attorney or legal adviser of said Benjamin at
any time during the period of his executorship, but says that he ex-
pressly declined so to do. Said Smith and said Benjamin have occa-
sionally been in this respondent's room when at Chicago on business
with said Fay, and have a few times consulted about some matter in
the presence of this respondent, but neither of them ever assumed to-
ward this respondent the relation of a client, nor did this respondent
ever imagine, till the filing of said bill, that said complainants, or either
of them, would ever pretend that such a relation existed.

That if the relation of this respondent to the parties and interests
mentioned in said bill has ever been spoken or written of in any other man-
ner, or as of any other or different character than above set forth,
63 such speaking or writing has been casual or inadvertant, and is
to be understood and construed according to the facts herein-
above stated and set forth.

This respondent holds said complainants to be utter strangers to the relation heretofore existing between this respondent and said Thomas and said Fay, and denies that there is or can be any ground whatever upon which this respondent can be held accountable to said complainants, as is charged in said bill of complaint.

And now, having fully answered, this respondent prays to be hence dismissed with his reasonable costs in their behalf most greviously sustained, and, etc.

CHARLES C. BONNEY.

LYMAN M. PAINE,
Solicitor.

See affidavit appended to like answer of this respondent in case No. 60748 in this court.

In the superior court of Cook County. In chancery.

STATE OF ILLINOIS,
County of C. C., ss:

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with the will
64 annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, dec., The First National Bank of Westboro', Massachusetts, Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

The separate answer of Charles W. Griggs, one of the said defendants, to the bill of complaint of the said complainants.

This respondent, saving all exceptions to the manifest insufficiencies of said bill of complaint, for answer thereto, says that he denies that he was ever the partner of or jointly interested with said Charles C. Bonney and J. Edwards Fay in any of the matters, transactions, or business mentioned in said bill of complaint, and this respondent also denies that he was ever, either separately or in connection with said Bonney and Fay, the attorney, agent, or counsel of said estate of
65 Andrew Huston and Remick Huston, or either of them, or of the
various representatives of said estate, except in one instance, where, in the absence from Chicago of said Fay, this respondent closed up a real estate sale for Thomas T. Remick which had theretofore been made, and wherein this respondent delivered the conveyances and collected the cash portion of the purchase paid, and received securities for the balance, and immediately thereupon remitted to said Thomas said cash and delivered over said securities. And this respondent says that, except in said instance, he has never had, and has not, in his possession, custody, or charge, or anywise under his control, any money or securities belonging to said estate, or either of them, or to the representatives thereof.

This respondent further says that he had a nominal business connec-

tion with said Bonney and Fay, by which court business was transacted
under the name of Bonney, Fay and Griggs, but said connection was
not anywise a partnership, as was well known, as this respondent
66 is informed and believes, by said complainants and by the representatives
of said estate; and this respondent says that he has
never had any control over or management of any business connected
with said estate of the representatives, nor has he been consulted
therein; that he has never received nor been entitled to any profits resulting
therefrom, and he ought not to be subject to any liabilities, if
any there be, connected therewith.

This respondent says that he has no knowledge, nor until long after the same did he have any information of the alleged transaction with said B. F. Remick and said National Bank of Westboro, nor is this respondent anywise liable in respect thereof. And now, having fully answered, this respondent prays to be hence dismissed, with his costs, and, etc.

CHARLES W. GRIGGS.

LYMAN M. PAINE,
Solicitor.

STATE OF ILLINOIS,
Cook County, ss:

On this 29th day of February, A. D. 1876, before me, a notary
67 public in and for said county, in the State aforesaid, personally
came Charles W. Griggs, and made oath that he has read the
foregoing answer by him subscribed and knows the contents thereof,
and that the same is true of his own knowledge except as to the matters
therein stated on information and belief, and as to those matters he believes
it to be true.

Witness my hand seal notarial.

[SEAL.] LYMAN M. PAINE, *N. P.*

And afterwards, to wit, on the seventh day of March, in the year last aforesaid, Joel D. Harvey et al., defendants, by Lawrence, Campbell and Lawrence, their solicitors, filed in said clerk's office their certain appearances in writing, which is in the words and figures following, to wit:

STATE OF ILLINOIS,
Cook County, ss:

In the superior court. Chancery.

PALMER C. SMITH ET AL.
vs. } 3520.
C. C. BONNEY ET AL.

We hereby enter the appearance of Joel D. Harvey and Henry
68 H. Porter, William H. Ferry and James B. Goodman, trustees for
the West Chicago Land Company, and George C. Campbell.

LAWRENCE, CAMPBELL AND LAWRENCE,
Sol'rs for said Def'ts.

And afterwards, to wit, on the twenty-ninth day of March, in the year last aforesaid, said complainants, by their solicitors aforesaid, filed in said clerk's office their certain replication, which is in the words and figures following, to wit:

STATE OF ILLINOIS,
Cook County, ss:

In the superior court of Cook County, of the March term, A. D. 1876.
In chancery.

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with the will annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick; Benjamin F. Remick, executor of Thomas T. Remick, deceased; the First National Bank of Westboro, Massachusetts, and Joel D. Harvey.
3520.

The replication of Palmer C. Smith and Job R. Remick, administrators de bonis non, with will annexed, of Remick Huston, deceased, complainants, to the answers of Charles C. Bonney and Charles W. Griggs, defendants.

69 These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that they do and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, are very uncertain, evasive, and insufficient in the law to be replied unto by the repliants, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

MILLER AND FROST,
Solicitors for Complainants.

70 And afterwards, to wit, on the fifth day of April, in the year last aforesaid, the First National Bank of Westboro, Mass., by its solicitors, filed in said clerk's office its certain answer, which is in the words and figures following, to wit:

STATE OF ILLINOIS,
County of Cook, ss:

Superior court of Cook County. In chancery.

PALMER C. SMITH AND JOB R. REMICK, administrators, etc.,
v.
CHARLES C. BONNEY ET AL.

The answer of the First National Bank of Westborough, Westborough, in the State of Massachusetts, one of the defendants, to the bill of complaint of Palmer C. Smith and Job R. Remick, administrators de bonis non, with the will annexed, of Remick Huston, deceased.

This defendant, now and at all times reserving to itself all manner of

benefit and advantage of exception to the many errors and insufficiencies of said bill of complaint, for answer thereto, or to so much thereof as it is advised it is material or necessary for it to make answer unto, says that it has no knowledge or information except such as it has derived from said bill, and that therefore it neither admits nor
71 denies that the said Remick Huston departed this life in the month of February, 1864, in Pickaway County, Ohio, leaving a will, of which the complainant's exhibit A purports to be a copy, or that letters testamentary were issued by the probate court of said Pickaway County to Thomas T. Remick, as the executor of the estate of said Remick Huston, or that the said Thomas T. Remick duly qualified and entered upon his office as executor of said estate, or that after the death of said Thomas T. Remick the said complainants were appointed by the probate court of said Pickaway County administrators de bonis non, with the will annexed, of the estate of said Remick Huston, or that they have duly qualified and entered upon the duties of their office as such administrators, or that the said Remick Huston was at the time of his death the owner in fee of the real estate described in said bill, to wit, the west half of the southwest quarter of section ten (10), in township thirty-nine, range thirteen east of the third principal meridian, in the county of Cook and State of Illinois, or that he had for many
72 years employed said Charles C. Bonney and J. Edwards Fay as his attorneys at law respecting said real estate, or that said Bonney and Fay knew of the death of said Huston, or that he was the owner of said land at the time of his decease, or that the said Thomas T. Remick employed said Bonney and Fay as the attorneys of the estate of said Remick Huston in respect to said lands, or that while they were acting as attorneys for said estate said land was sold at a judicial sale and the apparent legal title thereto was vested in the complainant, Job R. Remick, in trust for the estate of Remick Huston, or that it was known to Bonney and Fay that said Job R. Remick had no beneficial interest in said land belonging to said estate of said Huston, or that the said firm of Bonney, Fay and Griggs were ever the legal advisers of said estate of Remick Huston, and it calls upon the complainants for proof of their allegations in relation to the foregoing matters.

And this defendant admits, upon information and belief, that on or about the 15th day of July, 1872, the said Job R. Remick and the
73 said Thomas T. Remick executed and delivered their deed of conveyance whereby in consideration of the sum of $157,000 they granted and conveyed said real estate in fee-simple to one Joel D. Harvey, which deed was duly recorded in the office of the recorder of deeds of said Cook County, and that upon the delivery of said deed the said Harvey paid a part of said consideration money, to wit, $39,250 thereof, to the said Thomas T. Remick in cash, and for the balance thereof he executed and delivered his three certain promissory notes, dated the 15th day of July, 1872, for the sum of $39,250 each, payable respectively in one, two, and three years from date to the order of said Thomas T. Remick, with interest at eight per cent. per annum, and that to secure the payment of said notes, and each of them, the said Joel D. Harvey executed and delivered his certain deed of trust of said date whereby he conveyed said real estate and premises unto the said J. Edwards Fay, as trustee, for the purpose aforesaid, which said deed of trust was duly recorded in the office of said recorder of deeds of Cook County,
74 but it denies, upon like information and belief, that in joining with the said Job R. Remick in the execution of said deed to said

Harvey, and in receiving said cash payment and said notes the said Thomas T. Remick acted as the executor of the said estate of Remick Huston, as alleged in said bill, but on the contrary it avers upon like information and belief that in so doing the said Thomas T. Remick acted solely and entirely upon his own individual account and behalf, and in his own interest, and that although the legal title to said real estate was vested in the said Job R. Remick, he was a mere naked trustee therein for the use and benefit of said Thomas T. Remick, who was the equitable and beneficial owner thereof. And it denies upon like information and belief that the said notes ever became or were the property of the said estate of Remick Huston, or that the said estate ever had any interest, legal or equitable, therein, but on the contrary it avers upon like information and belief that said notes were in his lifetime the property of the said Thomas T. Remick.

75 And further answering, it avers that it has no knowledge or information, except such as it has derived from said bill, as to whether or not the said complainants refused to allow the application of funds belonging to the estate of Remick Huston for the use and benefit of the said firm of B. F. Remick Co., and therefore it neither admits nor denies the same, but calls for proof thereof.

And it further says that until the filing of said bill it never heard of said Remick Huston or his said estate and knew nothing thereof, and knew nothing in regard to any connection of the said Bonney, Fay, and Griggs, or either of them, with the said Remick Huston or his estate, or with said complainants, and it now knows nothing thereof, except as it is informed by said bill, and therefore it neither admits nor denies any of the allegations of said bill in regard thereto, including all of said allegations, without here specifically naming them, but it calls for proof of each and every one of them.

And further answering this defendant says that prior to the time when
said note of Joel D. Harvey to Thomas T. Remick, due by its
76 terms in three years from date, became due and payable, this de-
fendant loaned to the said firm of B. F. Remick Co., a large sum of money, to wit, the sum of thirty thousand dollars, evidenced by the promissory note of said B. F. Remick Co., payable on the 15th day of July, 1876, and dated the 21st day of June, 1875, with interest at the rate of ten per cent. per annum after the 15th day of January, 1876, and as collateral security for the repayment thereof when due the said note of Joel D. Harvey was legally assigned, transferred, and delivered to this defendant in good faith, and this defendant now holds the same as a bona fide purchaser, without notice of any claims thereto by the said estate of Remick Huston by said complainants or any one, and this defendant avers that the said Benjamin F. Remick, as the executor of said Thomas T. Remick, was the legal holder of said note, and had full power and authority to assign and transfer the same, and that this defendant is now the legal and equitable holder thereof, free and clear of any claim of the said complainants.

77 And this defendant further says that the notes mentioned in the amendment to said bill given for part of the purchase-money for part of said real estate sold are held in good faith as collateral and additional security for the payment of said note of Joel D. Harvey held by it, and another said notes of James C. Ayer and Company, of Lowell, Massachusetts. And as to all other matters and things in said bill and amendments alleged not herein sufficiently answered, confessed, denied, or avoided, this defendant denies the same as fully as if specifically referred to and denied.

And now having fully answered the said bill this defendant prays to be hence dismissed, with its costs, etc.

THE FIRST NATIONAL BANK OF WESTBOROUGH, MASSACHUSETTS,
By its solicitors, GOUDY, CHANDLER, SKINNER.
GOUDY, CHANDLER and SKINNER,
Sol'l's for said Def't.

And afterwards, to wit, on the twenty-second day of April, in the year last aforesaid, said complainants, by their solicitors aforesaid, filed in said clerk's office their certain motion, which is in the words and figures following, to wit:

78 STATE OF ILLINOIS,
Cook County, ss:

Superior court of Cook County. April term, A. D. 1876. In chancery.

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, the First National Bank of Westboro', Massachusetts, Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

And now come the said complainants and move that said bill be dismissed as to said Benjamin F. Remick, executor of Thomas T. Remick, deceased, without prejudice.

MILLER AND FROST,
Sol's for said Comp'ts.

And afterwards, to wit, on the twenty-fifth day of April, in the year last aforesaid, said complainants, by their solicitors aforesaid, filed in said clerk's office their certain replication, which is in the words and figures following, to wit: 79

STATE OF ILLINOIS,
Cook County, *ss:*

In the superior court of Cook County, April term, A. D. 1876. In chancery.

PALMER C. SMITH AND JOB R. REMICK, administrators, and, etc., complainants,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, ex. and, etc., The First National Bank of Westboro', Mass., Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees, and, etc., George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, defendants.

The replication of Palmer C. Smith and Job R. Remick, complainants, to the answers of the First National Bank of Westboro', Benjamin F. Remick, Benjamin F. Remick, executor:

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto saith, that they do and will aver, maintain, and prove said bill to be true, certain, and
80 sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive, and insufficient in the law to be replied unto by the replicants, without this, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these replicants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

MILLER AND FROST,
Solicitors for Complainants.

And afterwards, to wit, on the twenty-seventh day of April, in the year last aforesaid, said complainants, by their solicitors aforesaid, filed in said clerk's office their certain supplementary bill, which is in the words and figures following, to wit:

STATE OF ILLINOIS,
Cook County, *ss:*

Superior court of Cook County. In chancery.—3520.

To the honorable judges of the superior court of Cook County, in chancery sitting:

81 Humbly complaining, showeth unto your honors your orators, Palmer C. Smith and Job R. Remick, of the State of Ohio, administrators of the estate of Remick Huston, deceased, with the will annexed, and Edward J. Van Meter, of said State, administrator de bonis non with the will annexed of the estate of Thomas T. Remick,

deceased, that your orators, the said Palmer C. Smith and Job R. Remick, exhibited their original bill of complaint in this honorable court on or about the 3d day of February, A. D. 1876, against Charles C. Bonney, J. Edwards Fay, and Charles W. Griggs, composing the firm of Bonney, Fay and Griggs, Benjamin F. Remick, and the First National Bank of Westboro', Massachusetts, and Joel D. Harvey, and William C. Goudy and George Chandler, composing the firm of Goudy and Chandler, and that afterwards, and on or about the 14th day of February, A. D. 1876, exhibited in said cause their amended bill of complaint against Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, and George C.
Campbell, Anthony McElroy, Edward L. Davidson, Charles
82 B. McElroy, and John J. McElroy; in which said bill of complaint
your said orators charge that the said Remick Huston departed this *this* life in the month of February, A. D. 1864, at his then residence in Pickaway County, in said State of Ohio, leaving his last will and testament, a copy of which was thereto annexed; that said will was duly probated in said county of Pickaway, and letters testamentary duly issued by the probate court of said county on or about February 12th, A. D. 1864, to Thomas T. Remick, the executor, named in said will as the executor of said estate, and the said Thomas T. Remick duly qualified and entered upon his office as executor of said estate.

That afterwards, and on or about the 7th day of August, A. D. 1873, said Thomas T. Remick departed this life in said county of Pickaway, his then place of residence, leaving his last will and testament, which was duly probated in said county, and letters testamentary upon his estate were duly issued by the probate court of said county to Benjamin
F. Remick, as executor of his estate, on or about the day of
83 August, A. D. 1873, and that the said Benjamin duly qualified and
entered upon the duties of his office as such executor.

That on or about the 5th day of September, A. D. 1873, your said orators were duly appointed by the probate court of said county of Pickaway as administrators de bonis non of the estate of said Remick Huston, a copy of which letters were annexed to said bill, and that your said orators were duly qualified and entered upon the duties of their office as such executors.

That the said Remick Huston, at the time of his death, was the owner of certain premises in said bill of complaint described *on* title to which was held by your orator Job R. Remick in trust for the estate of said Remick Huston, which said premises were, on the 15th day of July, A. D. 1872, sold to Joel D. Harvey for the sum of $157,000—$39,000 cash, and the balance in three equal annual payments, secured by the three promissory notes of said Harvey for $39,250 each, payable in one, two, and three years, with interest at ten per cent. per annum, and that
said notes were secured by a mortgage or trust-deed of the
84 premises, and that said notes were made payable in form to said
Thomas T. Remick, but were, in fact, held by him in trust for said estate of Remick Huston, and said bill, among other things, charged that said notes were delivered into the hands of said Bonney, Fay and Griggs, to be held by them for your said orators; but that, without any authority from your orators, in the month of May or June, A. D. 1875, they wrongfully delivered one of said promissory notes, to wit, the note for $39,250 which by its terms became due July 15th, 1875, to the said Benjamin F. Remick, to enable the said B. F. Remick to use the same for the benefit of the firm of B. F. Remick Co., of which the said B. F. Remick was a member, and the said Remick endorsed the same as ex-

ecutor of said estate of Thomas T. Remick, without authority, permission,
or knowledge of your said orators, to the said First National Bank
of Westboro', Massachusetts, as collateral security for the payment of
a sum of money loaned by said First National Bank of Westboro', Massachusetts,
to said firm of B. F. Remick and Co., and that at that
85 time said firm of B. F. Remick and Co. was utterly insolvent, and
your orators charged in said bill that said First National Bank of
Westboro', Massachusetts, was not bona fide holder of said note, and
at the time well knew that said note was being wrongfully transferred to
the use of said B. F. Remick and Co., and your said orators therein prayed
that said promissory note might, by the final decree of this honorable
court, be declared to be the property of your said orators, to be delivered
up to your orators, and that the said Joel D. Harvey might be decreed
to pay said promissory note and the interest thereon to your said
orators, and that your said orators might have any other or further relief
as to your honors shall seem meet.

Your orators would further show unto your honors, by way of supplement,
that on or about the 10th day of February, A. D. 1876, said Benjamin
F. Remick voluntarily resigned his position and office as executor
of the will of Thomas T. Remick, and his resignation was duly accepted
by said probate court of Pickaway County, and afterwards, and
86 on the 23d day of February, A. D. 1876, your said orator, Edward
J. Van Meter, was duly appointed by said probate court of
Pickaway County administrator de bonis non, with the will annexed, of
Thomas T. Remick, and thereupon your said orator duly qualified and
entered upon his office as such administrator. A duly exemplified copy
of the said proceedings of said court and of the letters testamentary to
your said orator, Edward J. Van Meter, and of the will of said Thomas
T. Remick are hereto annexed, marked "Complainant's Exhibit 1," and
made a part hereof.

To the end, therefore, that the said defendants in the said bill and
amended bill may answer the matters herein charged by way of supplement,
and that your orator, the said Edward J. Van Meter, may be
allowed to prosecute said suit as cocomplainant with said cocomplainants
Palmer C. Smith and Job R. Remick, and may have the relief
prayed for in said bill, may it please your honors to grant to your orators
a writ of summons against said defendants as prayed for in said
original and amended bill, and that they be directed to answer
87 the matters herein charged by way of supplement, and your orators
will ever pray, and etc.

PALMER C. SMITH.
JOB R. REMICK.
E. J. VAN METER.

MILLER and FROST,
Solicitors for Complainants.

THE STATE OF OHIO,
Pickaway County, ss:

I, Palmer C. Smith, being duly sworn, depose and say that all the several matters and things which are stated in the foregoing bill as from the information of others, I believe to be true, and that all the several other matters and things therein set forth are true in substance and in fact.

PALMER C. SMITH.

Sworn to by said Palmer C. Smith before me, and subscribed by him in my presence, this 24th day of April, 1876.

[SEAL.] B. H. BOSTWICK, *N. P.*

Fees 40c.; p'd by P. C. Smith.

Complainants' Exhibit 1.

(Copy.)

In the matter of the estate of Thomas T. Remick, deceased.

Pickaway bounty probate court, February 10th, A. D. 1876.

This day came Benjamin F. Remick, executor of the will of
88 Thomas T. Remick, deceased, and tendered his resignation as such executor, and having heretofore filed his accounts as such executor in this court, it is ordered that said resignation be, and that the same is hereby, accepted.

In the matter of the personal estate of Thomas T. Remick.

Probate court of Pickaway County, Ohio, Febr'y 23d, 1876.

This day came Edward J. Van Meter and asked to be appointed the administrator de bonis non, with the will annexed, of Thomas T. Remick, dec'd, late of said county, dec'd, representing the personal estate of said decedent to be administral of the value of four thousand dollars. Thereupon the said Edward J. Van Meter was appointed administrator de bonis non upon the personal estate to be administered of the said Thomas T. Remick, deceased, and then he entered into bond in the sum of eight thousand ($8,000) dollars with Job R. Remick and Seymour R. Van Meter, his securities conditioned according to law. Samuel M. Owens, Stephen Kinmear, and Lyman E. Scoville were appointed appraisers.

THE STATE OF OHIO,
Pickaway County, ss:

89 To all whom these presents shall come, greeting:

Know ye that at a probate court holden with in and for the county aforesaid on the 23d day of February, A. D. 1876, Edward J. Van Meter was duly appointed by said court administrator de bonis non, with the will annexed, of the personal estate of Thomas T. Remick, late of said county, deceased; and whereas the said Edward J. Van Meter having appeared before said court, accepted said appointment, and entered into bond, with security, as required by said court, these are therefore to authorize and empower the said Edward J. Van Meter to administer according to law all and singular the goods, chattels, moneys, rights, and credits of said deceased, and also the proceeds of all the real estate of said deceased which he may be authorized to sell for the payment of the debts of said deceased, to collect all the debts due to and pay those due from the estate of said deceased, so far as its means will extend and the law requires, and to do all things which may be lawfully done in the premises to effect the just and speedy settlement of said estate.

90 In testimony whereof the seal of said court is hereunto affixed.

Witness, H. H. Hedges, sen., judge of said court, this 23d day of February, A. D. 1876.

[SEAL.] H. H. HEDGES, Sen.,
Probate Judge.

The State of Ohio,
Pickaway County, ss:

I, Henry H. Hedges, sen., judge of the probate court and ex-officio clerk of said court, within and for said county, in the State aforesaid, do hereby certify that the above and foregoing, to which this certificate is annexed, is a full, true, and complete copy of the record of the entry of resignation of Benjamin F. Remick, executor of the last will and testament of Thomas T. Remick, deceased. A full, true, and complete copy of the record of the appointment of Edward J. Van Meter, administrator de bonis non, with the will annexed, of the said Thomas T. Remick, deceased, truly taken and correctly copied from the journal records of said court; and also a full, true, and complete copy of the letters of administration issued to the said Edward J. Van Meter, truly taken
91 and correctly copied from the record of letters of administration of said court, as the same now appears to us of record in my said office, and that said records are kept by authority of law in my said office.

In attestation whereof I now hereunto set my hand officially and affixed the seal of my said office in the city of Circleville, in said county and State, this 6th day of April, A. D. 1876.

[SEAL.] H. H. HEDGES, Sen.,
Judge and Ex officio Clerk of the Probate Court of
Pickaway County, Ohio.

The State of Ohio,
Pickaway County, ss:

I, Henry H. Hedges, sen., judge of the probate court within and for said county of Pickaway, in the State of Ohio (in which county the office above named of the said Henry H. Hedges, sen., is kept), do certify that the said Henry H. Hedges, sen., who hath signed the above certificate and attestation, and to which the seal of said probate court, being the only seal of office of said judge and ex-officio clerk, is annexed, was on the 6th day of April, A. D. 1876, and at the time *of* said certificate and attestation was made, the clerk of the probate court
92 within and for the county of Pickaway and State of Ohio, and the keeper of the journal records and records of letters of administration for said county of Pickaway, and of the records and books of said public office, and that the said certificate and attestation of the said Henry H. Hedges, sen., is in due form and by the proper officer, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereof.

Circleville, Ohio, April 6th, 1876.

[SEAL.] H. H. HEDGES, Sen.,
Judge of the Probate Court of Pickaway County,
in the State of Ohio.

The State of Ohio,
Pickaway County, ss:

I, Henry H. Hedges, sen., judge and ex-officio clerk of the probate court within and for said county of Pickaway, in the State of Ohio, do hereby certify that Hon. Henry H. Hedges, sen., who hath given and signed the preceding certificate, was, on the 6th day of April, A. D. 1876, and at the time he made the above certificate, the judge of the probate court within and for said county, duly commissioned and qualified.

93 In testimony whereof I do hereby subscribe my name and affix the seal of said court this 6th day of April, A. D. 1876.

[SEAL.] H. H. HEDGES, SEN.,
Judge and Ex officio Clerk of Pickaway County Probate Court.

(Copy)

In the name of God, amen.

I, Thomas T. Remick, of Pickaway County, O., being of sound mind and memory, do make and publish this my last will and testament.

1st. I direct that all my just debts be paid.

2d. I give and devise to my brother Job R. Remick, all my interest in the home farm where we now reside, it being my desire to keep the said farm in the Remick name and family.

3d. Whereas I have a large interest in some coal and coke property in Southern Central Illinois known as the S't Louis Coal-Coke Company, the original cost of my interest in said company being $5,000, which was paid for out of the funds belonging to myself and my brother, Job R. Remick, and whereas I have loaned to said companies the sum of about $10,000 to redeem the same from a sale made on execution,
94 the said loan being made out of funds that belonged to myself, my sister, Mary Gregg, and the children of my deceased brother, Jonathan Remick. In order to close up said transaction in the most speedy manner, I give and bequeath all my interest in the said company, together with the sum so loaned by me as aforesaid, to my brother Benjamin F. Remick, and trust to collect the money so loaned as soon as practicable, and as fast as the same is collected to pay the same over the $\frac{1}{3}$ part thereof to my said sister, Mary Gregg, the $\frac{1}{3}$ part thereof to my nephews and neices, the children of my deceased brother, Jonathan Remick, and the other $\frac{1}{3}$ to be disposed of by my said trustee Benjamin F., as is provided for in the 9th item of this my last will. And I further direct that all my interest in the said property and companies be sold by my said trustee, either at public or private sale for cash, or upon such terms of credits as he in his wisdom shall think best, and the said sum of $5,000, together with the interest thereon, shall be refunded or repaid to the firm account of myself and brother Job. That is, going to Job the $\frac{1}{2}$ part thereof, and the residue to
95 be disposed of as is provided for in the 9th item of this my last will and testament.

4th. Whereas I have and hold in my name and interest in the firm of Tower, Classen and Co., manufacturers of chromatic printing presses, which company are manufacturing said printing presses at Canton, Ohio, and which interest was paid for out of funds belonging, $\frac{1}{3}$ to myself, $\frac{1}{3}$ to my sister, Mary Gregg, and $\frac{1}{3}$ to my nephews and neices, the children of my brother Jonathan Remick, deceased, it is my request that the whole interest in said company be held and retained so long as my brother Benjamin F. Remick may, in his discretion, think the same will be profitable; and I desire that the same shall be under the control and management of the said Benjamin F.; and as to my interest in the same I desire that it shall be held, controlled, and managed by my said brother Benjamin F., for the benefit of himself and my nephews and neices, the

children of my sister, Catharine Darst, dec'd, the children of my brother Jonathan Remick, dec'd, and Harry R. Gregg, the son of my sister Mary Gregg, share and share alike; and I give and bequeath all
96 my interest in said company to my said brother Benjamin F.
Remick in trust for himself and my said nephews and *neices* above named in equal proportion to be held, retained, and controlled by my said brother Benjamin F., so long as he, in his discretion, may deem advisable. My meaning is that each nephew and each *neice* is to take one share with my brother Benjamin.

5th. I direct that my executor shall pay to my brother Felix Remick, the sum of $500.00 per year, the 1st payment to be made in one year after my death, and the sum of $500.00 to be paid to him at the end of each and every year thereafter so long as said Felix may live.

6th. I give and bequeath to my beloved mother in-law, Maria Brown, my gray horse Doc.

7th. I direct my executor, hereinafter named, to build a good substantial iron fence around the grave yard on the farm belonging to myself and my brother J. R. Remick.

8th. As to the partnership existing between myself and my brother Job, we having kept no account of the said partnership as be-
97 tween ourselves, I will and direct that my executor, hereinafter
named, in making a settlement of said partnership matters, take the statement of my said brother Job, and any statement of said partnership accounts that my said brother Job may make I will and direct that the same shall be forever binding on my executor, heirs, and legatees, and all of them.

9th. All the rest and residue of my property of every kind and description I give and bequeath to my nephews and *neices*, the children of my sister Catharine Darst, dec'd, the children of my deceased brother Jonathan Remick and Harry R. Gregg, son of my sister Mary Gregg, share and share alike giving to each nephew and *neice* one share.

10th. It is my will, and I so direct, that the bequests given in the third item of this my last will to my sister Mary Gregg and to my nephews and *neices*, the children of my deceased brother Jonathan Remick, shall be taken by them in full satisfaction of their interest in the fund so loaned as is therein stated, and upon the receipt of the same they shall have no claim against me either in my individual capacity or as trustee.

98 11th. I hereby nominate and appoint my brother Benjamin F.
Remick, executor of this my last will and testament, and having every confidence in his integrity, I direct that no bond be required of him as such executor.

In testimony whereof I have hereunto set my hand and seal this 1st day of Aug., 1873.

[SEAL.] THOMAS T. REMICK.

Signed, sealed, and acknowledged by Thomas T. Remick as his last will and testament, in our presence, and signed by us in his presence, and at his request.

P. C. SMITH.
JAS. M. REESE.

THE STATE OF OHIO,
Pickaway County, *ss:*

We, P. C. Smith and Ja's M. Rees, being duly sworn in open court this 12th day of August, A. D. 1873, depose and say that we were present at the execution of the last will and testament of Thomas T. Remick,

hereto annexed; that we saw the said testator subscribe said will and heard him publish and declare the same to be his last will and tes-
99 tament, and that the said testator at the time of executing the same was of full age and of sound mind and memory, and not under any restraint, and that we signed the same as witnesses at his request and in his presence, and in the presence of each other.

P. C. SMITH.
JOS. M. REEVES.

Sworn to and subscribed in open court this 12th day of August, A. D. 1873.

JAMES TAYLOR,
Probate Judge.

THE STATE OF OHIO,
Pickaway County, ss:

I, Henry H. Hedges, sen., judge of the probate court and ex-officio clerk of said court within and for said county in the State aforesaid, do hereby certify that the above and foregoing, to which this certificate is annexed, is a full, true, and complete copy of the record of the last will and testament of Thomas T. Remick, deceased, and the proof of the same truly taken and correctly copied from the record and will of said court as the same now appears to us of record in my said office. In attestation whereof I have hereunto set my hand officially and affixed the seal
100 of my said office, in the city of Circleville, in said county and State, this 6th day of April, A. D. 1876.

[SEAL.] HENRY H. HEDGES, SEN.,
Judge and Ex-officio Clerk of the Probate Court
of Pickaway County, Ohio.

THE STATE OF OHIO,
Pickaway County, ss:

I, Henry H. Hedges, sen., judge of the probate court within and for the county of Pickaway, in the State of Ohio (in which county the office of said Henry H. Hedges, sen., is kept), do certify that the said Henry H. Hedges, sen., who hath signed the above certificate and attestation, and to which the seal of said probate court, being the only seal of office of said judge and ex-officio clerk, is annexed, was on the 6th day of April, A. D. 1876, and at the time of said certificate and attestation was made, the clerk of the probate court within and for the county of Pickaway, and the State of Ohio, and keeper of record of wills for said county of Pickaway, and of the records and books of said public office, and that the said certificate and attestation of the said Henry H. Hedges,
101 sen., is in due form and by the proper officer, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

Circleville, Ohio, April 6th, 1876.

[SEAL.] HENRY H. HEDGES, SEN.,
Judge of the Probate Court of Pickaway County,
in the State of Ohio.

THE STATE OF OHIO,
Pickaway County, ss:

I, Henry H. Hedges, sen., judge and ex-officio clerk of the probate court within and for said county of Pickaway, in the State of Ohio, do hereby certify that Hon. Henry H. Hedges, sen., who hath given and signed the preceding certificate, was on the 6th day of April, A. D. 1876, and at the time he made the above certificate, the judge of the probate court within and for said county, duly commissioned and qualified.

In testimony whereof I do hereby subscribe my name and affix the seal of said court this 6th day of April, A. D. 1876.

[SEAL.] H. H. HEDGES, SEN.,
Judge and ex-officio Clerk of Pickaway County Probate Court.

102 It is hereby stipulated that the complainants have leave to file the within supplemental bill.

GOUDY, CHANDLER, SKINNER.

And afterwards to wit, on the fourth day of May last aforesaid, there was filed in said clerk's office a certain petition and bond for removal, which are in the words and figures following, to wit:

STATE OF ILLINOIS,
Cook County, ss:

Superior court of Cook County. In chancery.

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non with the will annexed,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, the First National Bank of Westborough, Massachusetts, and Joel D. Harvey.

To the honorable judges of the superior court of Cook County, in chancery sitting:

The petition of your petitioner, The First National Bank of Westborough, in the State of Massachusetts, a corporation existing and doing business under and by virtue of the laws of the United States, and one of the defendants in the above-entitled suit, respectfully represents 103 that it is a citizen of the State of Massachusetts, and that the said complainants are citizens and residents of the State of Ohio, and that the defendants Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, and Joel D. Harvey are citizens and residents of the State of Illinois, and that the said defendants Benjamin F. Remick is a citizen and resident of the State of Ohio.

And your petitioner further represents that in said suit there is a controversy between it and the said complainants, and that the same is the principal controversy in said suit, and that the matters in dispute in said controversy and in said exceeds, exclusion of costs, the sum or value of five hundred dollars.

And your petitioner further represents that the controversy in said suit between it and said complainants can be fully determined in said suit.

And it further represents that since the commencement of said suit there has been no term of said court at which said suit could be tried.

Your petitioner therefore prays that said cause be removed by 104 the order of this court from this court into the circuit court of the United States for the northern district of Illinois, according to the act of Congress in such case made and provided.

FIRST NATIONAL BANK OF WESTBOROUGH,
By J. A. FAYERWETHER, *President*.
GOUDY, CHANDLER AND SKINNER,
Sol. for said Defend's.

STATE OF MASSACHUSETTS,
County of Worcester :

J. A. Fayerwether, being duly sworn, on oath says that he is the president of the First National Bank of Westborough, Massachusetts, the above petitioner; that he has read the above petition, and understands its contents, and that the same and the matters therein stated are true.

[SEAL.] A. G. BISCOE, *N. P.*

Know all men by these presents that the First National Bank of Westborough, Massachusetts, and William C. Goudy, of the city of Chicago, State of Illinois, are held and firmly bound unto Palmer C. Smith and Job R. Remick, administrators de bonis non with the will annexed of the estate of Remick Huston, in the penal sum of one 105 thousand dollars, for the payment of which sum well and truly to be made to the said Palmer C. Smith and Job R. Remick, administrators and assigns, the said bank binds itself, its successors and assigns, and the said binds himself, his heirs, executors, and administrators firmly by these presents.

Witness our hands and seals the day of A. D. 1876.

The condition of this obligation is such that whereas the said First National Bank of Westborough are about to file in the superior court of Cook County, in the State of Illinois, its petition for the removal of a certain suit now pending in the said court, wherein the said Palmer C. Smith and Job R. Remick, administrators as aforesaid, are plaintiffs, and Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, the First National Bank of Westborough, Massachusetts, Joel D. Harvey, William C. Goudy, and George Chandler are defendants, from the said superior court of Cook County unto the circuit court of the United States for the northern district of Illinois.

106 Now, therefore, if the said First National Bank of Westborough shall enter in said circuit court on the first day of its next session a copy of the record in such suit, and shall pay all costs that may be awarded by the said circuit court of said court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise to remain in full force and effect.

J. A. FAYERWETHER. [SEAL.]
W. C. GOUDY. [SEAL.]

And thereupon, on the day and year last aforesaid, the same being one of the days of the May term of said court, the following among other proceedings were had in said court, and entered of record, to wit:

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non of the estate of Remick Huston, deceased,

vs.

CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick executor of Thomas T. Remick, dec'd, The First National Bank of Worcester, Massachusetts, and Joel D. Harvey. } 3520, 60747.

This day comes the defendant, The First National Bank of 107 Westborough, Massachusetts, by Goudy and Chandler, its solicitors, and thereupon said defendant files herein its petition based on affidavit for the removal of this cause into the United States circuit court in and for the northern district of the State of Illinois, and it appearing to the court that the said defendant has filed herein its bond, conditional according to the act of Congress, in such case made and provided, it is ordered by the court that this cause be, and the same is hereby transferred to the said United States circuit court, and that the clerk of this court forthwith transmit to said United States circuit court a complete transcript of all papers and pleadings filed in this cause, together with all orders of court made and entered therein.

STATE OF ILLINOIS,
Cook County, ss:

I, John J. Healy, clerk of the superior court of Cook County, within and for the State of Illinois, do hereby certify that the above and foregoing is a full, true, and complete transcript of all papers and 108 pleadings now on file in my office, and of all orders made and entered of record in said court in a certain cause lately pending in said court on the chancery side thereof, wherein Palmer C. Smith et al. were complainants, and Charles C. Bonney et al. defendants.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Chicago, this 3d day of June, A. D. 1876.

[SEAL.] JNO. J. HEALY,
Clerk.

(Endorsed:) Filed June 21st, 1876. Wm. H. Bradley, clerk.

109 Afterwards, to wit: On the 27th day of June, A. D. 1876, said defendant, J. Edwards Fay, by his solicitors, filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of J. Edwards Fay.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States, in and for the said district.
To the July term, A. D. 1876. In chancery.

PALMER C. SMITH AND JOB R. RENICK, administrators, &c.,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, Benjamin F. Renick, as executor of Thomas T. Renick, deceased, The First National Bank of Westboro', Mass., Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward H. Davidson, Charles B. McElroy, and John J. McElroy.

The answer of J. Edwards Fay, one of the said respondents, to the bill of complaint, and the amendments thereto of the said complainants:

This respondent now and at all times hereafter saving and reserving to himself all benefit and advantage of exception which can or may
110 be had, or made to the many errors, uncertainties, and other imperfections in the said bill contained, comes and denies that the complainants have presented any such case as can or ought to be answered unto by this respondent, and he prays the same objection as could or might have been made by demurrer to the said bill, yet for answer thereto, he says:

That he denies that the said complainants are administrators de bonis non, with the will annexed, of the estate of Renick Huston, deceased, in the State of Illinois; that he admits, on information and belief, that they may be such administrators in the State of Ohio, but that this respondent denies that thereby they have any right whatever to have or maintain this suit; that he admits, on information and belief, that said Renick Huston died in the county of Pickaway, in the State of Ohio, the place of his domicile at about the time alleged in the said bill, leaving a last will and testament, but this respondent cannot state of his own knowledge whether the alleged copy of the said will attached to the said bill of complaint is a true copy of the said will of said Renick Huston or not; that this respondent admits, on information and belief, that the last will and testament of said Renick Huston was, at some time in the year 1864, duly probated in the State of Ohio, and that the said Thomas T. Renick was appointed, and was the executor of the said will in the State of Ohio, but this respondent denies that said Thomas T. Renick
111 was ever such executor in the State of Illinois; that this respondent admits, on information and belief, that said Thomas T. Renick died in said county of Pickaway and State of Ohio on or about the seventh day of August, A. D. 1873, leaving a last will and testament, and that the said Benjamin F. Renick was named and appointed in the said will the executor thereof; that, as this respondent is informed and believes, he was duly appointed such executor by the probate court of said county of Pickaway, on or about the fifteenth day of August, A.

D. 1873, and that he entered upon and continued in his office as such executor at the time of the filing of the bill of complaint in this cause. This respondent, further answering, says that he denies that said Renick Huston ever had any title of record to the premises mentioned and described in said bill of complaint, and says that at the time of the death of said Renick Huston, the record title to the said premises was in one Andrew Huston, deceased, subject, however, to sales of the said premises for taxes, the time allowed by law for redemption from which had long expired, and upon which sales, or some of them, deeds had issued, or to which the person or persons holding the certificates of sale were entitled, and that such person or persons were then claiming title in fee to the said premises adversely to the estate of said Andrew Huston, and to all other persons whomsoever; and that if the estate of said Andrew
112 Huston had any title or interest in the said premises the same was subject not only to the said adverse tax titles, but also to numerous claims and debts against the estate of said Andrew Huston which the claimants were seeking to prove against the estate of the said Andrew Huston at the time of the death of the said Renick Huston, and for the payment of which any and all right, title, and interest which the estate of said Andrew Huston had in and to the said premises was afterwards sold by Julius Rosenthal, esq., the administrator of the estate of said Andrew Huston in the State of Illinois, by virtue of an order and decree of the county court of Cook County, in said State of Illinois.

And this respondent, further answering, most expressly denies that the said Renick Huston ever employed Charles C. Bonney and this defendant, as is alleged in said bill of complaint, and denies that there ever was any such firm or copartnership as Bonney and Fay, composed of the said Charles C. Bonney and this respondent, and this respondent denies, on information and belief, that the said Renick Huston ever had any acquaintance with or ever employed said Charles C. Bonney in any way whatsoever.

This respondent denies that he was ever employed by said Renick Huston in his lifetime, except as is hereafter stated herein; admits that respondent knew by information had by letter and report of the
113 death of said Renick Huston at about the time it occurred, but denies that he (respondent) knew that he (said Renick Huston) owned the said premises or had any interest therein, except as the devisee of his father, the said Andrew Huston, after the payment of the debts of the said Andrew Huston, and the extinguishment of other claims and titles against the said land as aforesaid. And this respondent denies that the said Thomas T. Renick ever employed this respondent, or the said Bonney and this respondent, as attorneys for the estate of the said Renick Huston, as is alleged in said bill.

This respondent, further answering, denies that said Charles W. Griggs, named as codefendant in said bill, was ever received into any firm of Bonney and Fay, but says that for some time prior to the year 1869 this respondent was engaged in the practice of law in the city of Chicago, carrying on business in his individual name; that in the year 1869 the said Bonney and the said Griggs (who had before that time been associated under the firm-name and style of Bonney and Griggs) and this respondent commenced the occupation of certain office rooms in common, and associated their names under the style of Bonney, Fay and Griggs, for use in court matters and such other uses as they should mutually agree upon and should be convenient to them; but this respondent most expressly denies that any firm of Bonney, Fay and Griggs was ever employed in any manner by any legal representatives of any

estate of the said Renick Huston to the knowledge of this respondent. And respondent further says that the said Charles
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W. Griggs never had any interest in the business done by the said Charles C. Bonney, or in that done by this defendant, for the said Thomas T. Renick, deceased, in his lifetime, or for his executor, as is hereinafter mentioned, and that the said Griggs never rendered any service therein, so far as this respondent knows, except it may have been in some slight matter for the accommodation of the said Bonney or of this respondent.

And this respondent denies all appointment and all employment of the said Bonney, the said Griggs, and this respondent, or either of them, by the said complainant, or either of them as attorneys for the estate of said Renick Huston, as is alleged in said bill. And for a further answer to the matters and things mentioned in the said bill as amended, this respondent states and says and shows to the court as follows: That some time in the year 1863 (about the month of September or October, as nearly as this respondent can now recollect) the said Renick Huston called upon this respondent (who was then a lawyer in Chicago), and desired this respondent to assist him in examining the condition of certain lands situate in said Cook County, in the State of Illinois, which he (said Renick Huston) supposed to have belonged to his father, Andrew Huston, in his lifetime, and in which said Renick Huston supposed he had an interest by virtue of the will of said Andrew Hus-
115
ton; that this respondent learned, as the result of such examination, that administration upon the estate of said Andrew Huston de bonis non, with the will annexed, had been granted in the county court of said county to one Julius Rosenthal; that a large amount of claims had been allowed in said court against the said estate of said Andrew Huston, and a decree and order of said court had been made directing a sale of said lands (including the premises in said bill mentioned) by said administrator for the payment of said debts against said estate. Also, that all said lands (including said premises) had been sold for nonpayment of taxes, and that the time allowed by law for redemption therefrom had expired); that this respondent, in behalf of the said Renick Huston, procured the said decree in the said county court to be set aside as well as the order allowing the said claims and the matter of allowing the same to be given a rehearing; that said Renick Huston then left Chicago for his home in Ohio, and this respondent heard nothing more (so far as he now recollects) from or of the said Renick Huston until some months after, when he heard that said Renick Huston was dead; that in the year 1864, after the death of said Renick Huston, the said Thomas T. Renick, who was one of the devisees in the will of said Renick Huston, came to Chicago and employed this respondent among other
116
things to aid him in ascertaining the condition of the lands in said Cook County supposed to have belonged to the said Andrew Huston in his lifetime; that much time was spent and most of the said lands visited by the said Thomas T. Renick and this respondent, and much effort made to ascertain the value thereof and the chance or probability of recovering the same or any part thereof; that all the said lands in which the said Renick Huston was supposed to have had an interest as aforesaid (he having been the sole devisee of his father, the said Andrew) were so encumbered by claims against the estate of the said Andrew Huston and by tax titles and tax sales that the entire estate did not appear to be equal in value to the said debts, claims, and tax-titles, and that in due course of administration there was or might be nothing for either the estate of the said Andrew Huston or the said

Renick Huston; and the said Thomas T. Renick, ascertaining that nothing could be done without the risk, investment, and expenditure of many thousands of dollars of his own money, decided to return to his home in Ohio, and take no further action in regard to said lands and estate; that under the suggestion and advice of this respondent the said Thomas T. Renick finally changed his determination and decided to risk and invest his own money in the hope of saving something, and to resist the proceedings of Julius Rosenthal, administrator, &c., as afore-
117 said, then pending in the county court of said Cook County, Illinois, to sell the said premises in the said bill mentioned with other lands to pay the debts of said Andrew Huston, dec'd; that the motive of said Thomas T. Renick in so doing was to provide, after the payment to himself of all the monies which he should use, or which might be invested by him therein, together with all expenses and costs incurred in and about the said matters according to his discretion and of his bounty, for the persons mentioned in the said will of Renick Huston as legatees, and for the honor of the memory of the said Andrew Huston and the said Renick Huston to pay at his election of the debts owing by them respectively at the time of their decease; that he thereupon employed this respondent (the said Fay) as his general attorney for himself in and about the said litigation, and that he also afterwards employed this respondent as his general business agent concerning the said lands and such other matters and things as might be connected therewith or as he might otherwise have in said State of Illinois; that all such employment of this defendant by the said Thomas T. Renick was, so far as this respondent knows, personal and not in any manner otherwise; that the said Thomas T. Renick also retained and employed the said Charles C. Bonney as associate counsel to assist said Fay in the litigation then pending in the said county court
118 (in which the said Thomas T. was one of the defendants), and such as should and did thereafter arise in which he should be interested in the State of Illinois, in all of which the said Charles C. Bonney and the said J. Edwards Fay respectively acted for the said Thomas T. Renick and under his direction (except only so far as such action incidentally and by his direction extended to the other defendants in any of the said litigation and proceedings); and this respondent avers that such employment of the said Bonney and of this defendant was, in all respects, a separate and not a joint employment and service, and that the employment of the said Charles C. Bonney and his service only extended to cases in court and matters of counsel; that other services and matters were in the exclusive charge of this respondent.

And this respondent, further answering, says that the said Thomas T. Renick, in the prosecution of his intention as aforesaid, to try and save something out of said lands, was obliged to invest a large amount of his own money, as this respondent is informed and believes, in the purchase of tax-titles on the said lands and in redemptions from tax-sales, and in the purchase of claims against the estate of said Andrew Huston, and that he (said Thomas T. Renick) expended therein as nearly as this respondent can now recollect upwards of twenty-five thousand dollars thereof; and that such proceedings were had that,
119 after a very long and tedious litigation as to the same, the said lands (including the said premises in said bill mentioned) were sold by said Julius Rosenthal as administrator, &c., of Andrew Huston, as aforesaid, pursuant to and under the decree of said county court to pay debts of the said Andrew Huston.

And this respondent further shows and says that a suit was also

brought by one Anna Marsh, and a decree obtained in the circuit court of the United States in and for the northern district of Illinois, to satisfy an alleged claim against the estate of the said Renick Huston, and that a part of the said lands in litigation under the said proceedings in the said county court (including all the premises mentioned in said bill of complaint) were sold under the decree of the said circuit court, and all the right, title, and interest of which the said Renick Huston at the time of his death was possessed therein was sold and disposed of thereby; that both of the said sales were fair, open sales, made in public, free entirely to all competition, and under which sales whatsoever interest or title the estates of either the said Andrew Huston or the said Renick Huston respectively had in the said premises and land was wholly extinguished and passed to the said Job R. Renick (the purchaser thereof in name) for the sole benefit of the said Thomas T.
Renick, who paid for the same at said sales with his own funds,
120 but caused and directed the same to be so purchased in the name
of said Job R. Renick merely for any contingent benefit which might be derived thereby.

And this respondent, further answering, says that the said Thomas T. Renick caused a paper to be drawn expressive of the fact that said Job R. Renick held the said title entirely, subject to the direction of him, the said Thomas T. Renick, as to subsequent sales of the said lands, which said paper was also expressive of the intention of said Thomas T. that the proceeds of said lands should be distributed after the amount necessary to pay to him his costs and all his outlay, charges, and expenses, of whatsoever kind, with interest thereon, in the payment of any unpaid debts of the said Andrew Huston and of the said Renick Huston then remaining unpaid, and then divided among the persons mentioned as legatees in the will of Renick Huston; and this respondent says that, as he believes, the said Thomas T. Renick did not in any manner in his lifetime recognize that any of the said debts or any claim of any of the said persons was a legal obligation upon him, but that he was disposed, of his bounty and for the honor of the dead, to wit, the said Andrew Huston and the said Renick Huston, to pay the said debts and to provide for the said persons who had been named
as legatees with him in the said will of Renick Huston.

121 And this respondent further says that, as he is informed and
believes, the said paper was never executed by the said Job R. Renick, and that it is the belief of this respondent, and he so charges the fact to be, that the said Thomas T. Renick, always regarding the said lands and all the money and proceeds thereof as the fruit and product of his own personal efforts, and the investment of his own funds, and being fully determined so to keep and hold the said lands, money, and proceeds that none of the creditors, devisees, or heirs of either the said Andrew Huston or the said Renick Huston might or could have or maintain any claim thereto, either at law or in equity, deliberately, after the effect of the execution of the said instrument of writing had been explained to him by counsel, withheld the same from execution by said Job R. Renick, to the end that said Job R. might hold the said lands or such title as he had thereto, subject to the sole will and pleasure, order and direction, of him, the said Thomas T. Renick, whereby all the said lands held by the said Job R. Renick, as aforesaid, and the proceeds thereof belonged to the said Thomas T. Renick and to his estate, and now belong to the estate of the said Thomas T. Renick, deceased, and to the said Benjamin F. Renick as the executor of his will, to be disposed of according to the will of the

said Thomas T. Renick and the personal discretion thereby vested in him, the said Benjamin F., which discretion to manage, dispose 122 of, and distribute the said estate, having been so personally vested in the said Benjamin F. Renick, this respondent charges and alleges to be the reason and the sufficient reason why the said lands so held by said Job R., as aforesaid, or the proceeds thereof or of any of them, were not more particularly mentioned and specified in the said will of said Thomas T. Renick; and this respondent respectfully submits that the said Job R. Renick is accountable to the said Benjamin F. Renick, &c., for any of the said lands which remained unsold at the time of the death of the said Thomas T. as aforesaid, and for any proceeds of any of the said lands, title to which is so held by said Job R., if any such proceeds have or shall come to his (said Job's) possession or control, or if any of said lands have been or shall be disposed of by him without the direction of the said Benjamin F.

And this respondent, further answering, says that, pursuant to the manner in which the said lands were held and owned by the said Thomas T., but the apparent title to which was in the said Job R. Renick, the said Thomas T. Renick at various times contracted to sell and did sell of the said lands; that, as this respondent is informed and believes, the said Job R. always executed deeds as said Thomas T. directed, and that said Thomas T. received and disposed of the proceeds of the said sales, so far as the same were paid, and that no part thereof, as this respondent is informed and believes, ever passed to the 123 hands of said Job R., or was in any manner disposed of by him; and respondent says that a sale was made (of the said premises in said bill mentioned) by the said Thomas T. Renick (in his own right and as of his own land) to the said Joel D. Harvey, at about the time and for the price named in said bill; that the first payment therefor was made to said Thomas T. Renick, and that notes were executed for the balance of the purchase-money, payable to the order of said Thomas T. Renick, substantially as is alleged in said bill, and the payment thereof was secured by a trust-deed executed by said Joel D. Harvey to this respondent as trustee upon the premises sold, and that said Job R. Renick joined with said Thomas T. in the conveyance of the said premises so sold to said Harvey, on the request of the said Thomas T. Renick that he would do so, and with the understanding and consent, as this respondent is informed and believes, that the proceeds of the said sale should go to the said Thomas T. Renick, to be disposed of by him as he should see fit.

This respondent, further answering, denies that the said notes and trust-deed ever came to the possession of the said Thomas T. Renick, and denies that they ever came to the custody and possession of Bonney, Fay and Griggs, but says that the said notes and trust-deed 124 were, for a long time after said sale, left in the custody of the respondent, George C. Campbell, until an abstract of title should be furnished, which was not done in a manner satisfactory until after the death of said Thomas T. Renick.

This respondent, further answering, says that after the death of said Thomas T. Renick, and the appointment of the said Benjamin F. Renick as executor of his last will as aforesaid, the said Benjamin F. Renick continued the employment of this respondent as his attorney and general business agent as to matters pertaining to the estate of the said Thomas T. Remick, in the State of Illinois, and that as such business agent and attorney this respondent from time to time made collections of money belonging, as this respondent avers, to the estate of said

Thomas T. Renick as aforesaid, and that this respondent, by the direction, sanction, and assent of the said Benjamin F. Renick, as the executor of Thomas T. Renick as aforesaid, paid taxes on lands, title to which was in said Thomas T. Renick, and on the lands title to which was in said Job R. Renick as aforesaid, and paid other debts against the estate of said Thomas T. Renick out of money collected and received by him as such business agent, in like manner as he had done under the direction of the said Thomas T. Renick in his lifetime.

And this respondent, further answering, says that the said
125 Thomas T. Renick, at the time of his death, was a partner in a manufacturing business situated and carried on at Canton, in the State of Ohio, which business was a manufacturing and selling printing presses of a kind comparatively new, under certain patent rights of which the said Thomas T. Renick became the owner in common with others; that the said Thomas T. became a partner in the firm before that time, owning and carrying on the said business; that the said patent rights and the prospective development of the said business was such that the same was supposed to be of very great value; that the said firm was very considerably indebted at the time of the death of said Thomas T. Renick; that he, well knowing that the said business would require further aid and assistance from his estate, provided by his will that his said executor, the said Benjamin F. Renick, should continue the said interest of said Thomas T. in the said business, and manage and care for the same in such manner and for such time as the said Benjamin F. Renick, in his discretion, should see fit, the said Thomas T. Renick intending, when he made the purchase of the said interest in the said business, to carry the same on and develope it with purpose of finally disposing of it in the exercise of his proposed bounty concerning the said matters in such manner and to such person or persons as he should think proper.

And this respondent, further answering, says that after the death of said Thomas T. Renick, the said Benjamin F. Renick (as this
126 respondent is informed and believes) purchased the interest of one Peter G. Tower (who had been one of the partners of said Thomas T. Renick) in the said business, and that thereafter the business was carried on in the name and style of B. F. Renick and Co. (the name and style of the said firm before that having been Tower, Claassen and Co.), and that the interest of the said estate of said Thomas F. Renick continued therein as before.

And this respondent further says that the said business proving somewhat experimental, and the indebtedness made thereon during the lifetime of the said Thomas T. Renick, and afterwards, becoming due, and the difficulties experienced by the said business from the financial panic which began in September, 1873, became necessary that the said Benjamin F. Renick, as such executor as aforesaid, should from time to time assist the said business, which he did by some of the funds and securities which he received from this respondent and otherwise, and which belonged to the estate of said Thomas T. Renick, as this respondent avers as aforesaid.

And this respondent, further answering, says that, as he is informed and believes, the said Palmer C. Smith was the attorney and legal adviser of the said Thomas T. Renick, in his lifetime, as to business and matters belonging to him in the State of Ohio, and that after the
127 death of said Thomas T. Renick, the said Smith became and still is (or till lately was) the attorney and legal adviser of the said Benjamin F. Renick as the executor of the will of said Thomas T. Renick; and

this respondent says that in such transactions and correspondence as have occurred between this respondent and said Smith since the death of said Thomas T. Renick, the said Smith has sustained the relation of such attorney of said Benjamin F. Renick as executor as aforesaid. And this respondent says that pursuant thereto, and by the direction of said Benjamin F. Renick as such executor, this respondent has at various times since the death of said Thomas T. Renick paid to said Smith divers of the monies collected and received by this respondent as the attorney and agent of the said Benjamin F. as executor, &c., as aforesaid, very large amounts of which money, as this respondent is informed and believes, the said Smith paid over to the said Benjamin F. Renick, as such executor, and some of which money the said Benjamin F. Renick used (with the knowledge of said Smith at the time he so paid it to said Renick that he intended so to do) in aiding and assisting the said business at Canton, and the said firm of B. F. Renick and Co., in the same manner as the said complainants charge, was done with funds paid to said Benjamin F. Renick by this respondent.

128 And this respondent, further answering, says that the said notes, executed by said Harvey for the consideration of the sale of the said land, were none of them delivered until about the first day of February, A. D. 1875; that the one of said notes which first became due was never delivered to this respondent at all, but being fully paid at the time said title was made satisfactory was cancelled; that at about the time last above mentioned, the two of said notes last to become due were delivered to this respondent as the attorney and agent of the said Benjamin F. Renic as executor as aforesaid; that the said Benjamin F. Renick almost immediately requested that the said notes should be delivered up to him, and that this respondent did then deliver up to said Benjamin F. Renick, or to his order, one of said notes, and that afterwards, on or about the 29th day of May, A. D. 1875, on his express personal request and demand therefor, this respondent delivered the other of the said notes to him as such executor as aforesaid, as this respondent submits he was legally obliged and ought to have done.

And this respondent further says that at about that time very considerable amounts of indebtedness of the said manufacturing business in Canton, Ohio, had become due and payable, and although the said business was, as this respondent was then informed and believed,
9 giving good promise of success, and finally of large profits if well and discreetly managed, it was absolutely necessary to the successfully carrying on of said business, and to the protection of the estate of said Thomas T. Renick, which estate was supposed to be liable with the other partners of said firm for a great part if not for the whole of the said indebtedness, and especially necessary to the protection of the interest of the said estate in the said business, that further time should be granted or in some manner be obtained to the said firm and business in which to pay the said indebtedness; that the only way in which that could be done was by obtaining loans for such length of time that they could be paid out of the future expected profits of the said business, and the money obtained by such loans be used in the payment of the indebtedness of the said firm then due and past due.

And this respondent says that in pursuance thereof a loan was procured from said First National Bank of Westboro', Massachusetts (which is made a party defendant in this suit), of thirty thousand ($30,000) dollars, on or about the twenty-first day of June, A. D. 1875, to be paid on the fifteenth day of July, A. D. 1876, with interest at the rate of ten per cent. per annum (the interest upon which to the fifteenth

day of January, A. D. 1876, was paid and settled at the time said loan was made); that said Benjamin F. Renick, as the executor of
130 said Thomas T. Renick, dec'd, as aforesaid, endorsed the said
note made by said Harvey, which was by its written terms payable to the order of said Thomas T. Renick, on the 15th day of July, A. D. 1875, but the payment of which had before that time, and long before said note became due, been extended by the agreement of said Benjamin F. Renick, with Henry H. Porter, William H. Ferry, and James B. Goodman, as trustees of the West Chicago Land Company, for a period not exceeding two years from the time when it was to become due by its original written terms, the payment of the said note having been assumed by said West Chicago Land Company, and caused the said note to be delivered and transferred to the said First National Bank of Westboro' (Mass.), to be held and owned by it as security for the payment of the said loan to the said firm of B. F. Renick and Co., with the interest thereon until the same should be fully paid, it being the understanding that any surplus which should remain from said note of said Harvey, in case of its collection by said bank, should be paid to said Benjamin F. Renick or to his order.

And this respondent, further answering, says that at the time of the agreement of said Benjamin F. Renick, as executor, &c., as aforesaid, with said Porter, Ferry, and Goodman, it was besides the agreement to extend the payment of said notes also agreed that certain of the
131 said premises in said bill mentioned, and in said trust deed de-
scribed, might be released from the said trust deed upon notes of persons to whom the said West Chicago Land Company had then contracted to sell about forty acres of the said premises to the amount of $96,000, *dollars*, secured by incumbrance upon that part of said premises released as aforesaid, being placed in the hands of this respondent as security for the payment of said two notes for $39,250, to said Benjamin F. Renick, as executor, &c., or to the lawful holder of said notes (made by said Harvey). And this respondent avers that the said complainant, Palmer C. Smith, as the attorney of said Benjamin F. Renick, as aforesaid, had full knowledge of and assented to the extension of payment of said Harvey notes and said change of securities therefor.

And this respondent further answering says that at the time of the making the said loan from the said First National Bank of Westboro' it was expressly agreed and understood with it that in case such premises should be released from said trust deed, and said securities should be placed as aforesaid in the stead thereof, by the said West Chicago Land Company, then and in that case a proper proportion of the said notes for the said $96,000 with the trust deeds securing the payment of the same should be held by this respondent as security to and for
132 the said First National Bank of Westboro' for the payment of
the said note for $\$39{,}250\frac{00}{100}$ and the interest thereon which had been assigned and transferred to the said bank as aforesaid at the time it made the said loan of thirty thousand dollars to said B. F. Renick and Co.

And this respondent further answering says, that on or about the twenty   day of July, A. D. 1875, the said West Chicago Land Company requested of this respondent a release of the south forty acres of land in said trust deed made by said Harvey, to him described and at the same time delivered to this respondent twenty-four promissory notes made as appears by the said McElroys and Davidson, and payable to the order of the West Chicago Land Company and duly endorsed and assigned by it, each for the sum of four thousand dollars, with interest at

eight per cent. per annum payable annually, and one-half of which notes become due July 15th, 1876, and one-half which notes become due July 15th, 1877 (not allowing for grace on the same), all which notes were secured by trust deeds (one for each two of said notes), for which notes this respondent gave said West Chicago Land Company, per James Goodman, esq., its treasurer, a receipt or statement in effect showing that this respondent as the attorney of said Benjamin F. Renick as executor &c., as aforesaid, and further, as trustee in said trust deed
133 (as near as this respondent now remembers) had received and held the said notes for $96,000 as security for the payment of the said two notes made by said Harvey with the interest to accrue thereon at the rate of eight per cent. per annum from July 15th, 1875, and to pay the balance derived from said notes over to said West Chicago Land Company or their representatives or assigns.

And this respondent says that all the said notes for $96,000 (24 notes for $4,000 each) with the twelve trust deeds securing the same, and which are made to the defendant George C. Campbell as trustee, are now in the custody and control of this respondent, and he respectfully submits that he holds the same as security for the payment of the said two notes of $39,250 each and interest thereon as aforesaid, one of which said notes is now held and owned, as this respondent believes, by James C. Ayer and Co., of Lowell, Mass., and the other by said First National Bank of Westboro', and the balance after said two notes shall have been fully paid for the said West Chicago Land Company, and that the said notes for $4,000 &c. should be collected by this respondent and the proceeds paid out accordingly, and that the said complainants have no legal right to or claim upon the said notes, or any of them or any of the proceeds thereof.

And this respondent, further answering, says that he admits
134 that on or about the first of November last past the said Benjamin F. Renick made a note payable to this respondent as trustee for fifty thousand dollars, and made a mortgage to respondent as trustee, conveying certain land situate in the State of Ohio; and this respondent says that the said note and the said mortgage were both made and delivered to this respondent to hold, and that he now holds the same as collateral security for various notes which are held by various persons, some of which notes were made by the said firm of B. F. Renick and Co., and not in any manner to indemnify the said firm of Bonney, Fay and Griggs, or the said Bonney, or the said Griggs, for anything whatever.

And this respondent expressly denies that he had any knowledge or belief that the said firm of B. F. Renick and Co. were insolvent at the times alleged in the said bill of complaint, and when the said Benjamin F. Renick effected the said loan from said bank and used the said note of said Harvey as security therefor; that, so far as this respondent knew or believed, he supposed that the said firm was perfectly solvent and that it was then making a profit in its business of between $1,000 and $2,000 per month, and that this respondent was informed and believed that by the aid thus obtained the existing difficulties of the said business would be removed and its success be attained.

135 And this respondent most expressly denies all fraud and all unlawful acts or acts whatsoever charged against him in the said bill, and says that as to any and all matters and things in the said bill contained not herein specifically traversed and admitted or denied this respondent denies the same and each and every part thereof.

And having fully answered the said bill and the amendments thereto, this respondent prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. EDWARDS FAY.

GOUDY, CHANDLER AND SKINNER,
Solicitors for Respondent.

(Endorsed:) Filed June 27, 1876. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 10th day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PALMER C. SMITH ET AL.
vs. } In chancery.
CHARLES C. BONNEY ET AL.

By agreement of the parties by their solicitors, it is ordered by the court that this cause be referred to Henry W. Bishop, esq., master in chancery of this court, to take proofs herein and report the same to the court. 136

Afterwards, to wit, on the 11th day of July, A. D. 1876, said defendants Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, Joel D. Harvey and George C. Campbell, filed in said clerk's office their answer in said entitled cause which said answer is in the words and figures following, to wit:

137 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court thereof.

PALMER C. SMITH & JOB R. RENICK
vs. } In chancery.
CHARLES C. BONNEY ET AL.

The answers of Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, and Joel D. Harvey and George C. Campbell, to the bill of complaint and supplemental bill filed in said cause.

Now comes the said Henry H. Porter, William H. Ferry, and James B. Goodman and Joel D. Harvey and George C. Campbell, and for answer to said bill and amended bill in said cause, or so much thereof as they are advised is necessary to be answered unto, say:

That they admit that Renick Huston died as alleged in said bill, but they are not advised, and cannot state whether Exhibit "A" attached to said bill is a true copy of the will of said Huston, and call for proof in that regard.

Respondents further answering, on information and belief admit that Thomas T. Renick was duly appointed executor of the will of said Renick Huston.

They admit that said Thomas T. Renick died as alleged in the bill, and that Benjamin F. Renick was duly appointed executor. 138

That complainants were appointed administrators de bonis non with will annexed, of the estate of Renick Huston.

They are not informed and cannot state whether Renick Huston was the owner of the premises in the bill described, & call for proof. They do not know who were his attorneys, nor who were the attorneys of Thomas T. Renick.

Upon information and belief they admit that the premises in the bill described were sold to Job R. Renick at judicial sale, and that by such sale the legal title thereto became vested in him, but they have no knowledge, information, or belief as to whether said Job R. Renick held said title in trust, as alleged in said bill, and therefore can neither admit nor deny the same, but call for proof in that regard.

Respondents further answering admit that on or about the 15th day of July, 1872, said Job R. Renick sold and conveyed said premises to Joel D. Harvey for $157,000; that Harvey paid in cash $39,250, and made certain notes payable to Thomas T. Remick, as follows:

One note for $39,250, due in 1 year.
“ “ “ “ “ 2 years.
“ “ “ “ “ 3 years.

Also interest notes, as follows:

One note for $3,140, due in 1 year.
“ 6,280 “ 2 years.
“ 9,420 “ 3 years.

139 And to secure the payment thereof executed and delivered to J. Edwards Fay a deed of trust, whereby he conveyed to said Fay the premises in said bill described.

Respondents admit that said Thomas T. Renick left said notes in the custody of Bonney, Fay & Griggs, but they do not know and cannot state whether said Bonney, Fay & Griggs knew that they belonged to the estate of Renick Huston, as alleged in said bill.

Respondents further answering say that they admit that Bonney, Fay & Griggs were attorneys for complainants.

Respondents further answering say that they have no knowledge, information, or belief as to the dealings of the firm of B. F. Renick & Co. with complainants, or said Bonney, Fay & Griggs, nor whether said Bonney, Fay & Griggs delivered to said B. F. Renick for the use of said firm, or otherwise, the said note for $39,250, as alleged in said bill, nor whether the said B. G. Renick, as executor of Thomas T. Renick, endorsed said note to said B. F. Renick & Co., nor whether the said B. F. Renick & Co. endorsed the same to the said First National Bank of Westboro, of Worcester County, Mass., as collateral security, as alleged in said bill, nor whether said note is now in the hands of Goudy & Chandler, as attorneys for said First National Bank of Westboro.

Respondents know nothing about the solvency or insolvency of B. F. Renick & Co.

140 They do not know whether said First National Bank of Westboro' knew that the First National Bank of Westboro' was not the bona-fide holder of said note.

Respondents do not know whether said Benj. F. Renick executed and delivered to said J. Edwards Fay the note for $50,000, and first deed to secure the same, for the purpose of indemnity, as alleged in said bill.

Respondents do not know when complainants became informed of the matters and things complained of in said bill.

Respondents further answering admit that said Joel D. Harvey conveyed said premises to the said Porter, Ferry & Goodman, as trustees for the said West Chicago Land Company, subject to the notes and trust deed first aforesaid, and that said trustees afterwards sold the south forty acres thereof to Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, as alleged in said bill, and that an arrangement was entered into between the said trustees of the West Chicago Land Co., and that said complainant, P. C. Smith, as one of the administrators, and attorney for the estates of Renick Huston and Thomas T. Renick, which was reduced to writing and signed by said Smith, and which was and is in substance as follows:

Whereas Joel D. Harvey did heretofore execute, among other things,
two promissory notes, bearing date July 15th, 1872, for the
141 sum of $39,250.00 (thirty-nine thousand two hundred and fifty
dollars each), payable respectively to the order of Thomas T.
Renick, in two and three years after the date thereof, which notes were given as a part consideration for the sale of the W. ½ of the S. W. ¼ of sec. 10, 39, 13 (except so much as had been before conveyed & was used for a railroad), situate in the county of Cook, & State of Illinois, & which notes are now the property of the estate of Renick Huston, dec'd; and whereas there is a suit now pending in the court of common pleas of Pickaway County, Ohio, affecting the property of said estate; and whereas it is desirable to the interest of said estate that said money sh'd be invested until the termination of said suit;

And whereas the West Chicago Land Company have assumed the payment of said notes, together with the interest thereon, & the s'd West Chicago Land Co. desires a postponement of the payment of both the s'd notes for a time:

Now, therefore, I, P. C. Smith, of the said county of Pickaway, & State of Ohio, one of the adm's de bonis non, with the will annexed, of said Renick Huston, & att'y for said estate, do hereby say that I will not press the payment of said two notes until such time as I shall require the s'd money to be paid by reason of the termination of the said suit.
The extension of the time of the payment of said two notes shall not in
any event be for a time exceeding two years upon each of said
142 notes, from the time when each of the said notes respectively be-
come due & payable by the written terms thereof.

And further, the said maker of s'd notes, or the said West Chicago Land Co., are to pay interest upon the amount of said notes at the rate of eight per cent. per annum, payable annually.

And I hereby consent that the trustee in the trust-deed securing the payment of said notes may release therefrom the south forty acres from the said trust, upon the said Harvey, or the s'd West Chicago Land Co., furnishing to him to hold as collateral security for the payment of said notes, in addition to the security of said trust-deed, upon the residue of said tract of land in said trust-deed conveyed, notes (together with the deed of trust securing the same) of the individuals with whom the said West Chicago Land Co. have made a contract for the sale of the said south forty acres, or thereabouts, for the sum of ninety-six thousand (96,000$) dollars, to become due one-half July 15, 1876, & one-half July 15, 1877, with interest, payable annually, at the rate of 8 per c. per annum, secured by deed or deeds of trust upon the s'd land, & shall furnish to said trustee for examination a proper abstract of title showing a good title in said individuals, the makers of said collateral notes, at the time of their being so given to s'd trustee & the release being made.

It is understood that the s'd Joel D. Harvey, or said West
143 Chicago Land Co., upon the payment of all unpaid purchase
money for s'd premises, together with all the accrued and accruing interest thereon, except the principal of the 2 notes above mentioned, are entitled to and shall have a release of 20 acres of said land from the said trust-deed, in addition to s'd forty acres to be released

upon the conditions hereinbefore set forth or provided for in s'd deed of trust made by s'd Joel D. Harvey.

Sept. 12, 1874.

P. C. SMITH,
One of the Adm's, & Att'y for the Estate of Ren. Huston & Tho's T. Renick.

And the said J. Edwards Fay, as the trustee referred to in said writing, assented thereto and signed a stipulation to that effect, which was attached to said agreement of said Smith, and which was and is as follows:

In consideration of the above statement & request, I hereby agree to release the south forty acres of the tract above described upon the terms and conditions specified in the foregoing statement.

Chicago, Sept. 12th, 1874.

J. EDWARDS FAY, *Trustee.*

144 Respondents further answering deny that said writing was left with Joel D. Harvey, but allege that it was left with said James B. Goodman.

Respondents further answering allege that the said James B. Goodman also received from the said Benjamin F. Renick, as executor of the last will and testament of Thomas T. Renick, deceased, his stipulation in writing, dated September 12, 1874, with an agreement of the said J. Edwards Fay attached thereto, which was and is in substance as follows:

Whereas Joel D. Harvey, of Chicago, Illinois, did heretofore execute, among other things, two certain promissory notes, bearing date of the fifteenth (15th) day of July, A. D. 1872, each for the sum of thirty-nine thousand two hundred and fifty ($39,250) dollars, each payable respectively to the order of Thomas T. Renick, in two and three years after the date thereof, which said notes were given as a part of the consideration for the sale of the premises situate in the county of Cook, and State of Illinois, known and described as the W. ½ of the S. W. ¼ of sec. 10, T. 39 N., R. 13 E. of the 3rd P. M., except so much thereof as had before been conveyed to the Galena and Chicago Union (now the Northwestern) Railway Company, for a right of way;

145 And whereas the said Thomas T. Renick has deceased since the said notes were given, and by reason of divers matters and things connected with his estate the said estate cannot be settled for a very considerable time, and it is for the interest of his said estate that the said money to become and having become due upon said notes shall be invested until it be required for the final settlement of the said estate;

And whereas the said West Chicago Land Company have assumed the payment of the said notes, together with the interest thereon, and the said West Chicago Land Company desire a postponement of both the said notes for a time:

Now, therefore, I, Benjamin F. Renick, of the county of Pickaway, and State of Ohio, the sole executor of the last will of the said Thomas T. Renick, late of said county of Pickaway, and State of Ohio, deceased, do hereby say that I will not press the payment of the said two notes until such time as I shall require the said money to be paid to me to make settlement of the said estate, provided that the extension of the time for the payment of the said two notes shall not in any event be for a period exceeding two years upon each of said notes from the time when each note respectively becomes due and payable by the written terms thereof upon the said notes, and also the said maker of said notes or the said West Chicago Land Company are to pay interest upon the amount of said notes at the rate of eight per cent. per annum, payable annually on the fifteenth day of July of each and every year till the said shall be fully paid. And I hereby consent that the trustee in the trust-deed securing the payment of the said notes may release therefrom the south forty acres of the said tract of land upon the said Harvey or the said West Chicago Land Company furnishing to him to hold as collateral security for the payment of the said 146 notes and interest, in addition to the security of the said trust-deed upon the said residue of the said premises hereinabove and in said trust-deed described, and conveyed by said trust-deed to J. Edwards Fay, as trustee, notes with proper deeds of trust securing the same of the person or persons with whom the said West Chicago Land Company has made a contract for the sale of the said south forty acres or thereabouts for the sum of ninety-six thousand ($96,000). dollars to become due and payable one-half on the fifteenth day of July, A. D. 1876, and one-half on the fifteenth day of July, A. D. 1877, with interest, payable annually, at the rate of eight per cent. per annum, secured by deed or deeds of trust upon the said land, and shall furnish to said trustee for examination a proper abstract of title, showing a good title in said individuals, the makers of said collateral notes, at the time of their being so given to said trustee and the release being made.

It is understood that the said Joel D. Harvey and the said West Chicago Land Company, upon the payment of all unpaid purchase-money for said premises with all accrued interest thereon, except the principal of the two notes above mentioned, are entitled to have a release of twenty acres of said lands from said trust deed to said Fay, in addition to said forty acres to be released upon the conditions hereinabove and in said trust deed set forth.

Chicago, Sept. 12th, 1874.

(Signed) BENJAMIN F. RENICK,

147 *Executor of last will of Thomas T. Renick, dec'd.*

In consideration of the above statement and request, I hereby agree to release the south forty acres of the tract above described upon the terms and conditions specified in the foregoing statement.

Chicago, Sept. 12th, 1874.

(Signed) J. EDWARDS FAY,

Trustee, &c.

Respondents, further answering, allege that thereafter, and on or about the 21st day of July, A. D. 1875, the said Porter, Ferry, and Goodman, as trustees of the said West Chicago Land Co., delivered to the said J. Edwards Fay, the trustee in each of said agreements mentioned, the twenty-four promissory notes for the sum of $4,000 each in said bill described, as in said agreements is provided, & thereupon the said Fay, as trustee, in pursuance of the said agreements, executed and delivered to them a release of the said south forty acres of said premises in said bill described, from the operation of the trust deed in the said bill described as in said bill alleged.

Respondents, further answering, deny that the said Porter, Ferry, and Goodman, or either of them, delivered the said notes to said Benjamin F. Renick, as alleged in said bill, but on the contrary thereof 148 they allege that said notes and each of them were delivered to said Fay in person, and to no other person or persons whomsoever.

And they deny that said Ferry, Porter, and Goodman, or either of them, took the receipt of said Benjamin F. Renick therefor. On the contrary thereof, they allege that the said Fay offered to the said Porter, Ferry, & Goodman a receipt for said notes signed "Benjamin F. Renick, executor of Thomas Renick, deceased, by J. Edwards Fay, his att'y," but they refused to receive the same for the reason that said notes were not delivered to said Renick, and required the said Fay to sign the said receipt in person as trustee, for the reason that said notes were delivered to him personally as such trustee, which said receipt was and is in substance as follows:

Received, Chicago, July 21st, 1875, of Henry H. Porter, William H. Ferry, and James B. Goodman, as trustees of the West Chicago Land Company of Chicago, Illinois, twelve promissory notes, payable on July 15th, 1876, and twelve promissory notes payable July 15th, 1877, which notes are each for the sum of four thousand ($4,000) dollars, and are all dated Chicago, February 2nd, 1874, executed by Anthony McElroy, Edmund S. Davidson, Charles R. McElroy, and John J. McElroy, and payable at the First National Bank of Chicago, Illinois, with interest, payable July 15th, 1875, and annually thereafter, at the rate of eight (8) per cent. per annum, and trust deeds to George C. Campbell, esq., as trustee, securing the payment of the said notes on the
149 premises known as blocks numbered twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), thirty-nine (39), and forty (40), in the subdivision of the south half (S. ½) of sec. 10, town. 39 N., R. 13 E. of 3rd P. M., situated in the county of Cook and State of Illinois.

The said promissory notes above mentioned are received by me and are to be held as collateral security for the payment of two certain promissory notes dated Chicago, July 15th, 1872, made and executed by Joel D. Harvey, esq., and payable as written in two and three years after the date thereof, for the sum of thirty-nine thousand two hundred and fifty-dollars ($39,250) dollars each, to the order of Thomas T. Renick (now deceased), the payment of which said notes has, by contract of the executor of the will of said Thomas T. Renick, deceased, been extended for a period not exceeding two years upon each of said notes from the time when each note respectively became due by the written terms thereof, unless required before to make settlement of the estate of said Thomas T. Renick, and upon the provision that interest be paid upon each of said notes annually on July 15th of each year during such extended time, at the rate of eight per cent. per annum. Upon the due payment of the said notes so taken and received as collateral as aforesaid, after payment of the said two notes for thirty-nine thousand two hundred and fifty ($39,250) dollars each with the interest thereon, the surplus is to be paid to the said trustees of said West Chicago Land Company, and upon the payment of the interest from time to time
150 due upon said collateral notes after the payment thereby of any interest then due and unpaid upon said note made by said Harvey, the surplus thereof is to be paid to the said trustees.

(Signed) BENJAMIN F. RENICK,
Executor of Thomas T. Renick, deceased,
By J. EDWARDS FAY,
His Att'y.

(Signed) J. EDWARDS FAY,
Trustee, &c.

Respondents, further answering, say that they do not know whether any of said notes so delivered to said Fay as collateral as aforesaid have gone into the hands of the First National Bank of Westboro' or not, but they allege that the makers thereof have the right to pay the same when due, and no doubt will be ready and willing so to do, and that upon such payment being made the said Porter, Ferry, & Goodman, as trustees of said land co., will be entitled to have the same applied to the payment and satisfaction of the said two notes for $39,250 and interest as they respectively mature, and the balance paid over to them, and if the controversy as to who is entitled to receive the amount of said $39,250 notes, or either of them, shall continue, the said Porter, Ferry, & Goodman, as trustees as aforesaid, will be entitled to have the amount thereof paid into court to await the result of this suit, & the balance of said collateral notes paid over to them as aforesaid.

And now, having fully answered, they pray to be hence dis-
151 missed with their reasonable costs in this behalf, most wrongfully sustained.

WILLIAM H. FERRY,
HENRY H. PORTER,
JAMES B. GOODMAN,
Trustees of the West Chicago Land Co., &
JOEL D. HARVEY & GEORGE C. CAMPBELL,
By LAWRENCE, CAMPBELL & LAWRENCE,
Their Sol'rs.

(Endorsed:) Filed July 11, 1876. W'm H. Bradley, cl'k.

152 And on the same day, to wit, the 11th day of July, A. D. 1876, said complainants by their solicitors filed in said clerk's office their replication in said entitled cause, which said replication is in the words and figures following, to wit:

Replication to answer of def'ts, Porter, Ferry et al.

United States circuit court, northern district of Ill's. July term, A. D. 1876.

PALMER C. SMITH ET AL.
vs.
CHARLES C. BONNEY, NATIONAL BANK OF Westboro, et al.

The replication of Palmer C. Smith et al., complainants, to the answer of Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, and Joel D. Harvey and George C. Campbell, to the bill of complaint and supplemental bill filed in said cause.

This repliant, saving and reserving to himself all manner of exception to the insufficiences of said answer, for replication thereto saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendants is untrue and uncertain and insufficient to be replied unto by this repliant, without this, that any other matter or thing in said answer material to be replied unto, confessed or avoided, traversed or denied, is true;
153 all which matters and things this repliant is and will be ready to

aver and prove as this honorable court shall direct, and humbly prays as in this bill he has already prayed.

MILLER AND FROST,
Sol'rs for Complainants.

(Endorsed:) Filed July 11, 1876. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 12th day of July, A. D. 1876, there was filed in said clerk's office a transcript from the superior court of Cook County, Illinois, of the answer of said Benjamin F. Renick in said entitled cause, which said transcript of answer is in the words and figures following, to wit:

154 In the superior court of Cook County of the April term, A. D. 1876. In chancery.

STATE OF ILLINOIS,
Cook County, ss:

PALMER C. SMITH AND JOB R. RENICK, administrators, and c.,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, CHARLES W. Griggs, Benjamin F. Renick, Benjamin F. Renick, as executor of Thomas T. Renick, dec'd, the First National Bank of Westboro, Mass., Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

The answer of Benjamin F. Renick, one of the said defendants, for himself and as the executor of the will of Thomas T. Renick, deceased, to the bill of complaint of the said complainants.

This defendant now and at all times hereafter saving and reserving to himself all benefit and advantage of exception which can or may be had to the many errors, uncertainties, and other imperfections in the said bill contained, comes and denies that the said complainants have 155 presented any such case as can or ought to be answered unto by this defendant, and he prays the same objection as could or might have been made by him by demurrer to the said bill, yet for answer thereunto he says that he denies that the said complainants are administrators de bonis non with the will annexed of the estate of Renick Huston, deceased, in the State of Illinois; that he admits that the said complainants may be such administrators in the State of Ohio, but that this respondent denies that thereby they have any right whatever to have or maintain this suit; that he admits that said Renick Huston died in Pickaway County, in the State of Ohio, at about the time alleged in said bill; that he left a last will and testament, but that this defendant does not know of his own knowledge, and therefore cannot state whether the alleged copy of said will attached to said bill of complaint is a true copy thereof or not.

This defendant further answering says that he denies that said Thomas T. Renick in his lifetime was (so far as this defendant knows or believes) the executor of the will of said Renick Huston, in the State of

Illinois, but admits on information and belief that said Thomas T.
156 Renick was such executor in the State of Ohio, and that he died in the said county of Pickaway and State of Ohio at about the time in said bill alleged, leaving a last will and testament, and defendant says that he (this defendant) was duly appointed by the probate court of said county of Pickaway, the executor of the said will, and that letters testamentary were duly issued to him accordingly on or about the fifteenth day of August, A. D. 1873, a copy of which said letters testamentary, this respondent insists, ought to have been annexed by said complainants to their said bill.

This defendant further answering says that he denies on information and belief that said Renick Huston ever had any title of record to the said premises mentioned and described in said bill of complaint, and says that whether the said Renick Huston in his lifetime ever claimed any title thereto or interest therein this respondent is ignorant, except that this respondent states that it was common report in the family of said Renick Huston that the said Renick Huston had some interest in the said premises as the devisee of his father, Andrew Huston, deceased, subject to the administration of the estate of said Andrew Huston and the payment of his debts.

This defendant further answering denies on information and
157 belief that said Thomas T. Renick was ever in any manner the administrator or executor of either the said Andrew Huston or the said Renick Huston in the State of Illinois, and says that he (the said Thomas T. Renick) was at all times of his life a non-resident of the State of Illinois, and was, as this respondent is advised, disqualified from being such executor or administrator.

This defendant further alleges on his information and belief that one Julius Rosenthal was the administrator de bonis non with the will annexed of the estate of said Andrew Huston in the State of Illinois, and that there never was any administration of any estate of the said Renick Huston in the State of Illinois, and this respondent denies on information and belief that the said Renick Huston ever had or left any estate in the said State of Illinois to be administered upon, as will more fully appear from the statements and facts hereinafter contained.

This defendant further answering denies on information and belief that the said Renick Huston in his lifetime ever employed the said Charles C. Bonney, or had any relations with him whatever, and also denies on information and belief that any such partnership as
158 that of Bonney and Fay, as alleged in said bill, ever existed.

This defendant says, on information and belief, that some relation of attorney and client may have existed between said Fay and said Renick Huston in his lifetime, but to what extent this respondent is ignorant and cannot further state, but denies on information and belief that said Thomas T. Renick ever employed said Bonney and said Fay, or either of them, as attorneys for the estate of said Renick Huston, as is charged in said bill.

This defendant further answering says that as he is informed and believes the said Thomas T. Renick some time in the year 1864 came to Chicago, in the said State of Illinois (he being one of the devisees of said Renick Huston, who was the sole devisee of his father, the said Andrew Huston, and would take his estate after the payment of the debts of the said Andrew), and employed the said Fay, among other things, to ascertain the condition of the premises mentioned in said bill of complaint; that said Thomas T. Renick found the estate (including the premises in said bill mentioned) supposed to belong to said Andrew

Huston in his life-time, so incumbered by claims against his estate and by tax-titles, that the entire value of the whole estate was not equal 159 to said claims and tax-titles, and that in due course of administration there was or would be nothing for either the estate of said Andrew Huston or of said Renick Huston; that proceedings in court in said Cook County were then pending for a sale of the said premises to pay debts of said Andrew Huston, who died indebted to a very large amount, and that tax sale or sales of the said premises had passed beyond the time allowed by law for redemption therefrom, and that said Thomas T., ascertaining that nothing could be done without the risk, investment, and expenditure of many thousands of dollars of his own money, decided to return to his home in Ohio and to take no further action in the said matters or in regard to the said lands and estate; that under the suggestion and advice of said Fay, said Thomas T. finally changed his determination and decided to risk his money in the hope of saving something, and to resist the proceedings of Julius Rosenthal, the administrator, *and* &c., of said estate in said State of Illinois, then pending, to sell the said premises in said bill mentioned, with other lands, to pay the debt of said Andrew Huston; that the motive of said Thomas T. in so doing was to provide, after the repayment to himself of all the monies which might be invested by him therein, with all expenses and 160 costs incurred in and about the said matters, according to his discretion and of his bounty for the persons mentioned as legatees in the will of the said Renick Huston; that he thereupon employed and retained said Fay as his general attorney for himself in and about the said litigation, and that he (said Thomas T.) also afterwards employed said Fay as his general business agent concerning the said lands and such other matters and things as might be connected with the same, or as he might otherwise have in said State of Illinois; that he also retained and employed said Charles C. Bonney as associate counsel to assist said Fay in the litigation then pending (in which he, the said Thomas T., was one of the defendants), and such as should and did thereafter arise in which he (said Thomas T.) should be interested in the said State of Illinois, in all of which the said Charles C. Bonney and the said J. Edwards Fay respectively acted for the said Thomas T. Renick and under his direction only, except so far as such action incidentally and by his direction extended to the other defendants in any of the said litigation and proceedings.

And this defendant further answering says that, as he is informed and believes, the said Thomas T. Renick never in his lifetime employed the said Charles W. Griggs in and about any of the said matters in 161 any way whatsoever, and defendant says further that he has never so employed the said Griggs since the death of said Thomas T. Renick, and that he (this defendant) was not sufficiently acquainted with said Griggs to know him by sight even until since the time of the filing of this bill of complaint of the said complainants in this cause, and that, as this defendant is informed and believes, the said employment of said Bonney and of said Fay by said Thomas T. Renick in his lifetime was in all respects a separate and not a joint employment and service; and, further answering, defendant says that he has never employed the said Charles C. Bonney about the said matters or in any way whatsoever.

And this defendant further answering says, on information and belief, that the said Thomas T. Renick in the prosecution of his intention as aforesaid, to try and save something out of the said lands, was obliged to invest a large amount of his own money in the purchase of some tax-

titles on the said lands and in redemptions from tax-sales and in the purchase of claims against the said estate of Andrew Huston, and that he expended therein, as this defendant is informed and believes, upwards of twenty-five thousand dollars thereof, but exactly how much
this defendant does not know and cannot state; that such pro-
162 ceedings were also had that *that* the said lands in said bill men-
tioned were sold by said Julius Rosenthal, as administrator, and c., of Andrew Huston as aforesaid, and under a decree of the county court of said county of Cook, and also under a decree of the circuit court of the United States in and for the northern district of Illinois, the first-mentioned sale being to pay debts against the estate of the said Andrew Huston, and the said last-mentioned sale being to satisfy the claim of one Anna Marsh against the estate of said Renick Huston, both of which sales were fair, open, public sales, free to all competition, and under which the said land or whatsoever interest the estates of said Andrew Huston and said Renick Huston respectively had therein was wholly extinguished, and passed to said Job R. Renick for the benefit of said Thomas T. Renick, who paid for the same at said sales, as this defendant is informed and believes, with his own funds, but caused the same to be so purchased in the name of said Job R. Renick merely for any contingent benefit which might be derived to the title thereby.

And this defendant further answering says that, as he is informed and believes, the said Thomas T. Renick caused a paper to be drawn expressive of the fact that the said Job R. Renick held the said ti-
163 tle entirely subject to the direction of the said Thomas T. Renick
as to subsequent sales of the said land, which instrument was also expressive of the intention of said Thomas T. that the proceeds of said lands should be distributed after the amount necessary to pay to him all his outlay, costs, charges, and expenses, with interest thereon, in the payment of any debts of said Andrew Huston and of said Renick Huston then remaining unpaid, and then divided among the persons mentioned as legatees in the will of Renick Huston. And this defendant says that the said Thomas T. Renick, as he believes, did not in any manner in his lifetime recognize that any of the said debts or any claim of any of the said persons was a legal obligation upon him, but that he was disposed of his bounty and for the honor of the said deceased persons to pay the said debts and to provide for the said persons who had been named as legatees with him in the said will of Renick Huston.

And this defendant further says that it has lately come to his knowledge that the said paper was never executed by the said Job R. Renick, and that it is the belief of this respondent, and he so charges the fact to be, that the said Thomas T. Renick, always regarding the said lands and all the money and proceeds thereof as the fruit and product of his
own personal efforts and the investment of his own funds, and
164 being fully determined so to keep and hold the said lands, money,
and proceeds that none of the creditors, devisees, or heirs of either the said Andrew Huston or the said Renick Huston might or could have or maintain any claim thereto, either at law or in equity, deliberately, after the effect of the execution of the said instrument of writing had been explained to him by counsel, withheld the same from execution by said Job R. Renick, to the end that said Job R. might hold the said lands, or such title as he had thereto, subject to the sole will and pleasure, order and direction of him, the said Thomas T. Renick, whereby all the said lands held by said Job R. Renick as aforesaid, and the proceeds thereof, belonged to the estate of the said Thomas T. Renick, and now belong to this defendant as the executor of the said Thomas

T. Renick, to be disposed of according to the will of said Thomas T. and the personal discretion thereby vested in this respondent, which discretion this respondent charges to be the reason why the said lands held by said Job R. as aforesaid, or the proceeds thereof, or of any of them which had been so held by him were not particularly mentioned and specified in the said will of said Thomas T.; and this defendant charges and will insist that the said Job R. Renick is accountable to this respondent for any of the said lands remaining unsold at the time 165 of the death of the said Thomas T. Renick, and for any proceeds of any of the said lands, title to which was or is so held by said Job, if any such proceeds have or shall come to his (said Job's) possession or control, or if he has disposed of, or shall dispose of, any of the said lands without the direction of this respondent.

And this defendant, further answering, says, on information and belief, that pursuant to the manner in which the said lands (and other property) was held and owned by the said Thomas T. Renick, but the apparent title to which was in the said Job R. Renick, the said Thomas T. at various times contracted to sell and did sell of the said lands; that the said Job R. always executed deeds as said Thomas T. directed, and that said Thomas T. received and disposed of the proceeds of the sales, so far as the same were paid, and that no part thereof ever passed to the hands of said Job R., or was in any manner disposed of by him; that a sale was made by said Thomas T. (in his own right and as of his own land) to said Joel D. Harvey at about the time and for the price named in said bill; that the first payment was made to said Thomas T. Renick, and that notes were executed for the balance of the purchase-money, payable to the order of said Thomas T. Renick, substantially as alleged in said bill, secured by a trust deed to said Fay 166 as trustee, and that said Job R. joined with said Thomas T. in the conveyance of the said premises to said Harvey, the purchaser, on the request of the said Thomas T. Renick that he (Job) would do so, and with the understanding and consent that the proceeds of said sales should go to said Thomas T. Renick to be disposed of by him as he should see fit.

This defendant, further answering, says that after the death of said Thomas F. Renick, and the appointment of this respondent as executor of his estate as aforesaid, he continued the employment of said Fay as his attorney and business agent as to matters belonging to the estate of said Thomas T. Renick, in the said State of Illinois, and that as such attorney and agent said Fay from time to time made collections of moneys belonging, as this respondent avers, to the estate of Thomas T. Renick as aforesaid, and that said Fay, by the direction, sanction, and assent of this defendant as said executor of Thomas T. Renick, paid taxes on lands title to which was in said Thomas T. Renick, and on the lands title to which was in Job R. as aforesaid, and paid other debts against the estate of said Thomas T. out of money collected or received by him as such business agent, in like manner as he had done under the direction of said Thomas T. Renick in his lifetime.

And this respondent, further answering, says that during the 167 lifetime of said Thomas T. Renick he purchased an interest in a manufacturing business situated and carried on at Canton, in the State of Ohio, and being a manufacturing of printing-presses, and that he became a partner in the firm owning and carrying on the said business; that thereby he became the owner of the one-third interest in certain patent right supposed to be of very considerable value, and of certain real estate and personal property belonging to said firm; that the said firm was somewhat indebted at the time of the death of said Thomas T., and that he, well knowing that the said business would require further aid and assistance from his estate, provided by his will to the effect that your respondent, as his executor, should continue the said interest of said Thomas T. Renick in the said business, and manage and care for the same in such manner and for such time as this respondent in his discretion should see fit, the said Thomas T. intending, when he made the purchase of the said interest in the said business, to carry the same on and develop it, with the purpose of finally disposing of it in the exercise of his proposed bounty concerning the said matters, in such manner and to such person or persons as he thought proper.

And this respondent says that owing to the financial panic of the year 1873, and the somewhat experimental character of the
168 said business, the debts of the said firm which had accrued in the lifetime of the said Thomas T. Renick, with additions made thereto afterwards in and about the said business, made it necessary that this respondent should from time to time, as such executor, furnish money from the funds and securities belonging to the said estate of Thomas T. Renick, to protect and aid the said business.

This respondent further says that the said Palmer C. Smith was the attorney of said Thomas T. Renick in all matters relating to the matters in his hands and charge concerning the estates of the said Andrew Huston and the said Renick Huston in the State of Ohio, as well as his own matters in the State of Ohio in the lifetime of said Thomas T., and that after the death of the said Thomas T. he (said Smith) became the attorney of this respondent as the executor of the will of said Thomas T., and that said Smith as such attorney counseled and represented this respondent in court at the time the application was made in the probate court in the State of Ohio to have the will of said Thomas T. admitted to probate, and at the time of the appointment of this respondent as such executor, and in all matters which have from time to time come up in regard to said estate in said court, and in said Pickaway County, to this time, and that the said Smith has never withdrawn from such service or in any way notified this respondent
169 to this time that such relation was terminated (unless so far as this suit is such notice).

And this respondent further says that said Smith as such attorney has from time to time paid to this respondent as such executor monies which he (Smith) received from said Fay, and which said Fay received upon matters and obligations payable to said Thomas T. Renick, and belonging to his estate, and which was paid to said Smith by said Fay, with the sanction and consent and by the direction of this respondent as such executor, to the amount of upwards of twenty thousand dollars, a large part of which this respondent used with the full knowledge thereof on the part of said Smith, and of respondent's intention so to do in the aid of the said business at Canton, Ohio, and in the payment of debts owing by the said firm, of which said Thomas T. Renick was a member as aforesaid.

And respondent further says that on or about the second day of March, A. D. 1874, this respondent himself purchased the interest held before that time by one Peter G. Tower in said firm, of which said Thomas T. was a member at the time of his death, this respondent being at the time fully confident that by so doing and giving his own personal aid and influence, as well as such aid as might be necessary as such executor as aforesaid, to it, the said business could be made suc-

cessful and the expectations which said Thomas T. Renick had in
170 his lifetime concerning the same would be realized, and that from
and after that date the said business has been carried on in the firm name of B. F. Renick and Co., and that the interest of the estate of the said Thomas T. Renick (deceased) in the said business was unchanged by this respondent's said purchase, and the said firm was thereafter composed of Benjamin F. Renick, Benjamin F. Renick as executor of Thomas T. Renick (deceased), and Peter J. Claussen.

And this respondent, further answering, says that, as he is informed and believes, the said notes, made by said Harvey at the time of the conveyance to him of the said premises mentioned in the said bill of complaint, were not in fact delivered to said Thomas T. Renick or to said Fay as is in said bill of complaint alleged, but were for a long time, to wit, until some time in the month of February, A. D. 1875, held in the custody of some third person until certain matters and things in regard to the title of the said premises were done to make the same satisfactory to the said West Chicago Land Company, and that in fact the said Fay never had any possession of the one of said notes which first became due by the terms thereof; that the other two of said notes were delivered to said Fay in the said month of February, A. D. 1875, at which time the said Fay was the attorney and business agent at Chicago of this respondent as the executor of said Thomas T. Renick,
171 as aforesaid.

And this defendant says that soon after the said Fay had received the said notes which this defendant charges and insists he (said Fay) in fact did, as the agent of this respondent, and could do in no other way, this respondent requested said Fay to deliver up the said notes to him, and the said Fay did thereupon, at some time in the said month of February, A. D. 1875, deliver one of the said notes to this respondent as such executor, or to his order, and that afterwards, on or about the month of May, A. D. 1875, the said Fay, upon this respondent's express personal request and demand therefor, did deliver the other of the said notes to this respondent as the executor of said Thomas T. Renick as aforesaid, as he, as this defendant submits, ought to have done.

And this defendant, further answering, says that at about that time very considerable amounts of indebtedness of the said manufacturing business in Canton, Ohio, had become due and payable, and although the said business was, as this defendant was informed by the managing partner and by all the persons engaged in the charge and conduct of the said business, steadily improving and then giving good promise of success and finally of large profit, if well and discreetly managed, it was absolutely necessary to the carrying on of the said business,
172 and to the protection of the estate of the said Thomas T. Renick,
which estate was liable with the other partners of said firm for a great part of it not the whole of said indebtedness, and especially necessary to the protection and continuance of the interest of the said estate in the said business that further time should in some manner be obtained to the said firm and business in which to pay the said indebtedness; that the only way in which that could be done was by obtaining loans for such time that they could be paid out of the future expected profits of the said business, and the money thus obtained be used in the payment of the indebtedness of the said firm then due and past due.

And this respondent says that, in pursuance thereof, he, on behalf of his said firm, caused a loan to be procured from the First National Bank of Westboro, of the town of Westboro, in the State of Massachu-

setts (which is made a party defendant in this suit), of thirty thousand dollars on or about the day of June, A. D. 1875, to be paid on the fifteenth day of July, A. D. 1876, with interest at the rate of ten per cent. per annum (the interest upon which to January 15th, 1876, was paid and settled at the time said loan was made), and that this respondent, as such executor of said Thomas T. Renick, dec'd, as aforesaid, endorsed the said note made by said Harvey, which was, by its written
terms, payable to the order of said Thomas T. Renick on the 15th
173 day of July, A. D. 1875; but the payment of which had then been
extended, as is hereinafter set forth, and caused the same to be transferred to the said First National Bank of Westboro, to be held and owned by it as security for the payment of the said loan to this respondent's said firm, with interest upon the said loan until the same should all be paid, it being the understanding that any surplus which should remain from said note of said Harvey, in case of its collection by said bank, should be paid to this respondent or his order.

And this respondent, further answering, says that on or about the day of , A. D. 1874, this respondent, as the executor of said Thomas T. Renick, as aforesaid, executed a paper in writing, whereby he agreed with the said Porter, Ferry, and Goodman, as trustees of the West Chicago Land Company (who are all made partners to this suit), and who had assumed the payment of the notes made by said Harvey, as aforesaid, that the time of the payment of the said two notes might be extended for a period not exceeding two years from the time when they were to become due by the original terms thereof, and that certain of the said premises might be released from the trust-deed securing the
same upon other notes and securities in the said writing men-
174 tioned being placed in the hands of said Fay (who was the trustee
in the trust-deed securing the said two notes), to stand in place of and as security for the payment of said two notes made by said Harvey, which notes and securities so to be taken, in case they were taken, were to stand, and this defendant submits do stand, as security to the said First National Bank of Westboro', in the case that it becomes entitled to have the said note made by said Harvey paid to it in the same manner as such notes and securities would have secured the payment of the said Harvey note to this respondent if he had not transferred it to the said First National Bank of Westboro', as aforesaid.

And this respondent further says that, as he is informed and believes, the said Smith had, prior thereto, executed a similar paper, an alleged copy of which is stated to be attached to said bill, in which paper the said Smith alleged an interest in the said notes in the estate of said Renick Huston, dec'd. And this respondent charges and will insist that the said statement was wrongful and surreptitious on the part of said Smith, and contrary to the facts in the case and the rights of this respondent, and all other parties concerned in the said matter.

And this respondent, further answering, says, on information and be-
lief, that the only manner in which, and the only reason why any
175 application to extend the time of the payment of the said notes
made by said J. D. Harvey was because the said Smith claimed to be and was the attorney of this respondent, and, as such, represented the estate of the said Thomas T. Renick, as, indeed, fully appears by the said alleged instrument of extension, made by said Smith.

And this respondent further says, that at the time the loan hereinbefore mentioned was made from the said First National Bank of Westboro', it was expressly understood by them and agreed on the part of this respondent that in case the south forty acres of the said land in said bill of complaints described should be released, and notes for the sum of ninety-six thousand dollars should be furnished by the West Chicago Land Company to the said Fay, to be held as collateral security for the payment of the said two notes made by said Harvey, a proper proportion of the said notes making up the said sum of $96,000 should be held as security to the said First National Bank of Westboro' for the payment of the said note of said Harvey which was transferred to it as aforesaid by this respondent, which this respondent states, on his information and belief, is the manner in which one-half part of the said notes for the said $96,000 are now held, and that the said bank is in good faith, and justly, as this respondent submits, entitled to the same accordingly.

176 And this respondent, further answering, says that he admits the making of a note for fifty thousand dollars to said Fay in November last, and securing the same by a mortgage on certain lands in the State of Ohio, which note was made to said Fay as trustee, and was delivered to said Fay as such trustee to hold as security for various notes which are held by various persons, some of them notes made by this defendant individually, and some of them notes made by the said firm of B. F. Renick & Co., a part of which said notes are held by said Fay, and that said Fay still holds the said note for fifty thousand dollars accordingly, but not in any manner to indemnify the said firm of Bonney, Fay and Griggs, or the said Bonney or the said Griggs, for anything whatsoever.

And this respondent denies that the said firm of B. F. Renick and Co. were insolvent at the time alleged in the said bill of complaint when the said respondent used the said securities as aforesaid, so far as this respondent then knew or believes, and that this respondent fully believes and was confident that by so using the same as aforesaid it would result in the full and complete final success of the said business.

And this respondent, further answering, says, that on or about the eighth day of February, A. D. 1876, and after the said P. C. Smith had been to the said county of Cook and State of Illinois, and 177 had commenced this suit and another similar suit against this respondent and others, he (the said Smith) sent for this respondent, and while he (said Smith) was yet counsel and legal adviser of this respondent as aforesaid, and without withdrawing from such service, advised this respondent, as this respondent believes, in order that he (said Smith) might have an advantage over this defendant in the said suits, to sign a paper purporting to be a resignation by this respondent of the executorship of the said will of Thomas T. Renick, deceased, and that said Smith has since, as this respondent is informed, procured the appointment of some other person to be the administrator de bonis non with the will annexed of the said estate of said Thomas T. Renick, dec'd, in the said county of Pickaway and State of Ohio.

And this respondent charges and will insist that his said signature to said papers was wrongfully procured by said Smith, and is a fraud and wrong to this respondent, and that no other person can rightfully be appointed such administrator in the place and stead of this respondent, under the terms and conditions of said will and the discretion thereby vested in this respondent, and that he shall insist on his right to be restored to his office as such executor, and to have the said alleged administrator removed.

178 And having fully answered, this respondent prays to be hence

dismissed with his costs, in this behalf most wrongfully sustained, and ct.

BENJAMIN F. RENICK,
For himself and as executor of the will of
Thomas T. Renick, deceased,
By LYMAN W. PAINE,
His Solicitor.

LYMAN W. PAINE,
Solicitor for said B. F. Renick.

STATE OF ILLINOIS,
Cook County, ss:

I, John J. Healy, clerk of the superior court of Cook County, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain answer now on file in my office in a certain cause lately pending in said court on the chancery side thereof, wherein Palmer C. Smith et al. were complainants and Charles C. Bonney et al. defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this eighth day of July, A. D. 1876.

[SEAL.] JNO. J. HEALY, *Clerk.*

179 (Endorsed:) Filed July 12, 1876. W'm H. Bradley, cl'k.

180 Afterwards, to wit, on the 13th day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PALMER C. SMITH ET AL.
vs. } In chancery.
CHARLES C. BONNEY ET AL.

Now come the parties, by their solicitors, and, on motion of complainants' solicitor, leave is given complainants to withdraw their replication to the answers of the defendants, Harry H. Porter, William H. Ferry, and James B. Goodman, trustees, &c., and Joel D. Harvey and George C. Campbell.

Afterwards, to wit, on the 14th day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PALMER C. SMITH ET AL.
vs. } In chancery.
CHARLES C. BONNEY ET AL.

Now come the parties, by their solicitors, and Mess'r's Lawrence Campbell and Lawrence, solicitors, enter the appearance of defendants Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, and adopt in their answer herein the answer of the West
181 Chicago Land Company, Joel D. Harvey, and George C. Campbell.

The answers to the original bill to stand as the answers to the supplemental bill herein, and leave is given complainant to file replication to answer of J. Edwards Fay; and thereupon this cause is set down for hearing upon the pleadings herein and on proofs taken on the answer of the defendant bank, and after hearing the same in part the further hearing of the same is postponed until to-morrow morning.

And on the same day, to wit, the 14th day of July, A. D. 1876, said complainants, by their solicitors, filed in said clerk's office their replication to the answer of J. Edwards Fay in said entitled cause, which said replication is in the words and figures following, to wit:

Replication to answer of J. Edwards Fay.

Circuit court of U. S., northern district of Ill's. July T., 1876.

PALMER C. SMITH, ADM'R, ET AL.,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY,
THE WESTBORO BANK, ET AL.

The replication of complainants to the answer of J. Edwards Fay.

The repliant, saving all exception to the insufficiencies of said answer, says that they will prove their said bill true, certain, and sufficient, and said answer untrue, uncertain, and insufficient, &c. 182

MILLER AND FROST,
Sol'rs for Complainant.

(Endorsed:) Filed July 14, 1876. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 15th day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PALMER C. SMITH ET AL.
vs. In chancery.
CHARLES C. BONNEY ET AL.

Now come again the parties, by their solicitors, and after hearing the concluding arguments of counsel herein, the court not being now sufficiently advised in the premises, takes the cause under advisement.

Afterwards, to wit, on the 31st day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

183 PALMER C. SMITH AND JOB R. RENICK, administrators de bonis non of the estate of Renick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, Benjamin F. Renick as executor of Thomas T. Renick, deceased, the First National Bank of Westboro, Massachusetts, Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy. In chancery.

Now come the parties, by their solicitors, and this cause having been heretofore heard upon the transcript of the record from the State court, the pleadings, proofs, and exhibits herein, and the court having considered, and being now fully advised in the premises, finds the equities herein with the defendants, and dismisses the bill herein at the costs of the complainants, without prejudice as to the defendants Benjamin F. Renick and J. Edwards Fay.

It is thereupon considered, adjudged, and decreed by the court that this cause be dismissed, and that the defendants have and recover of and from the complainants their costs and charges by them about their defence in this behalf expended, amounting to the sum of one
184 hundred and nineteen dollars and ten cents, and that execution issue therefor.

And thereupon the complainants pray an appeal to the Supreme Court of the United States, which is allowed upon giving bond herein in the penal sum of one thousand dollars, with security, to be approved by the court or by the clerk of this court.

And on the same day, to wit, the 31st day of July, A. D. 1876, said complainants, by their solicitors, filed in said clerk's office their certificate of evidence in said entitled cause, which said certificate of evidence is in the words and figures following, to wit:

Certificate of evidence.

Circuit court of the United States. In chancery.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

PALMER C. SMITH AND JOB R. RENICK, administrators de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Renick, deceased, complainants,

vs.

CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, the First National Bank of Westboro, Massachusetts, Joel D. Harvey, and Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, defendants.

185 This is to certify that upon the hearing of the above entitled cause the complainants introduced and read in evidence the following stipulation:

In the circuit court of the United States for the northern district of Illinois. In chancery:

PALMER C. SMITH AND JOB R. RENICK, adm'rs, &c.,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, Benjamin F. Renick, executor, &c., the First National Bank of Westboro', Mass., Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of West Chicago Land Company; George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

It is admitted on behalf of the defendants, the First National Bank of Westboro', Mass., in the above-entitled cause—

1. That Andrew Huston was seized in fee simple absolute of the west half (W. ½) of the southwest quarter (S. W. ¼) of section ten (10), in township thirty-nine (39) north, range thirteen (13) east of the third principal meridian (3d P. M.), during his life and at the time of his death.

2. That Andrew Huston died in the county of Pickaway, in the State of Ohio, the place of his residence in March, A. D. 1854, leaving a will, by which he derived his property, including the above-described
186 tract of land, to his son Renick Huston, subject to the payment of his debts, and in said will appointed Jonathan Renick, of Pickaway County, Ohio, the executor of said will, to whom letters testamentary were issued on or about the 20 day March, A. D. 1854.

3. That Jonathan Renick died in Pickaway County, Ohio, the place of his residence in September, 1862.

4. That Renick Huston died in Feb'y, 1864, in Pickaway County, Ohio, the place of his residence, leaving a will, a copy of which is attached to the bill in this cause, and is marked "Exhibit A," and that letters testamentary were issued to Thomas T. Renick (named as executor in said will) by the probate court of said Pickaway County, Ohio, on or about the 17 day of February, A. D. 1864.

5. That on or about the 22d January, A. D. 1863, letters of administion de bonis non with the will annexed of the estate of Andrew Huston were issued by the county court of Cook County, Illinois, to Julius Rosenthal, who on the 19 day of September, A. D. 1853, filed a petition in said court for leave to sell real estate of said Andrew Huston to pay his debts, and among other property described in said petition was said tract of land, and such proceedings were had under said petition that said tract of land was sold under the decree of the court rendered therein on the 12th day of July, A. D. 1871, to Job R. Renick, and on the same day a deed was made by the said administrator, Rosenthal,
187 to said Job R. Renick conveying said tract of land in accordance with the directions of said decree; all which proceedings, sale, and the said administrator's report thereof was duly approved by the said county court.

6. That on or about May 28th, 1868, a bill was filed in the circuit court of the United States for the northern district of Illinois by Anna Marsh against Thomas T. Renick, executor of the will of Renick Huston, for the purpose of compelling a sale of any interest the said Renick Huston might have in any real estate situate in Cook County, Illinois, in

order that the bequests mentioned and made in the will of said Renick Huston might be paid; that such proceedings were had under said bill of complaint, that a decree was rendered in accordance with the prayer thereof, and under said decree all interest of said Renick Huston in certain real estate, including the said tract of land, was sold to the said Job R. Renick July 11, 1871, and on the same day a deed was made in accordance with the directions of said decree by the said Thomas T. Renick, the executor of Renick Huston, conveying said tract of land to Job R. Renick.

7. That Thomas T. Renick died in August, 1873, in Pickaway County, Ohio, at the place of his residence, leaving a last will, by which the defendant, Benjamin F. Renick, was appointed executor, to whom letters
testamentary were issued by the probate court of said county of
188 Pickaway, a copy of which will is made a part of this stipulation,
and is marked "Exhibit B."

8. That in September, 1873, the complainants, Palmer C. Smith and Job R. Renick, were appointed by the probate court of the said county of Pickaway administrators de bonis non with the will annexed of Renick Huston.

9. That although Job R. Renick became, in the manner aforesaid, possessed of the title and of the record seized in fee simple absolute of the said land, yet by some arrangement between the parties interested, but which does not appear of record, he held it in trust for the benefit of the estate of Renick Huston and of Thomas T. Renick; but it is not admitted that there was any notice of said trust to said First National Bank of Westboro', or to the defendants, Joel D. Harvey, Edward L. Davidson, Anthony McElroy, Charles B. McElroy, and John J. McElroy; but, on the contrary, such notice is most expressly and entirely denied by each and all the said defendants, the First National Bank of Westboro', Harvey Davidson, and the McElroys.

10. On the 15th day of July, 1872, or thereabouts, the said Job R. Renick and Thomas T. Renick, as administrator, &c., of Andrew Huston, and as executor of the will of Renick Huston, and in his own right, executed a deed to Joel D. Harvey, and for a consideration of $157,000
conveyed the W. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of section 10, town 39 N., R. 13
189 E. of 3rd P. M., except so much thereof as had been conveyed for
a right of way for a railroad, and subject to a loan to John Clark,
which expired on the first day of May, 1873, and the said Joel D. Harvey executed his notes of the same date, July 15, 1872, for a part of the purchase-money, which notes were three in number, payable to the order of Thomas T. Renick, and for the sum of $39,250, and payable in one, two, and three years after date; also, one note for $9,420, payable one year after the date thereof; one note for $6,280, payable two years after the date thereof, and one note for $3,140, payable 3 years after the date thereof, the three last-mentioned notes being for interest on the said principal notes; all payable to the order of Thomas T. Renick at the First National Bank, Chicago, Illinois, and bearing interest at ten per cent. after due, and at the same time the said Harvey executed a deed of trust upon said premises to J. Edwards Fay as trustee to secure the payment of said six notes; that the said Harvey, in taking the title to said land and executing said deed of trust and notes, acted for the West Chicago Land Company, which was the real purchaser of the said premises, and that said Harvey subsequently conveyed said land to said company, or to certain persons as its trustees, subject to said incumbrance. For a more full and correct statement of the contents of said deed and trust deed, reference is to be made to the

190 originals thereof, or copies of the same, to be produced on the trial of this cause.

The complainants and the defendants are to be allowed to disprove any of the facts herein stated, notwithstanding this admission, if they can do so, and to prove any other facts material to the case.

And it is further agreed that in case said bill is dismissed by the final order of the court, it may be dismissed without prejudice as to the other defendants than the above-named First National Bank of Westboro', Mass.

Dated Chicago, July 12, 1876.

GOUDY, CHANDLER AND SKINNER.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

Complainants then read in evidence the following stipulation:

Circuit court of the United States, northern district of Illinois. In chancery.

PALMER C. SMITH AND JOB R. RENICK, ADMINistrators, &c., of Renick Huston, dec'd,
v.
CHARLES C. BONNEY ET AL., THE FIRST NAtional Bank of Westboro' et al.
} Bill.

SAME-COMPLAINANTS
v.
CHARLES C. BONNEY ET AL., JAMES C. AYER et al.
} Bill.

191 It is stipulated that the above-entitled two causes be referred to the master in chancery, Henry W. Bishop, to take proof and report, and that either party may take testimony before him upon giving one day's notice, and that the testimony taken in one cause may be read in the other, as far as applicable.

GOUDY, CHANDLER AND SKINNER,
Sol'rs for Defendants.
MILLER AND FROST,
Sol'rs for Complainants.

(Endorsed:) Filed July 10, 1876. W'm H. Bradley, cl'k.

And also the following deposition:

192 United States circuit court, northern district of Illinois. In chancery.

PALMER C. SMITH, JOB R. RENICK, ADMINIStrators,
vs.
CHARLES C. BONNEY, JAMES C. AYER, ET AL.

and

PALMER C. SMITH, JOB R. REMICK, ET AL.
vs.
CHARLES C. BONNEY, FIRST NATIONAL BANK of Westboro, et al.

The deposition of Palmer C. Smith taken before me, James Hewitt, a notary public in and for the county of Cook and State of Illinois, by agreement of the parties hereto on the part of the complainants in this cause on the 13th day of July, 1876, at the office of Goudy, Chandler & Skinner, Chicago, Illinois.

I certify that the above witness, after being by me first duly sworn, was examined by M'r Miller, and testified as follows; the signature of said witness being waived by consent.

JAMES HEWITT,
Notary Public.

193 Direct examination by M'r Miller:

Q. What is your name, and where do you reside?

A. Palmer C. Smith; State of Ohio.

Q. What is your occupation?

A. Lawyer.

Q. You are one of the complainants in this case?

A. Yes, sir.

Q. Did you know Thomas T. Renick in his lifetime?

A. I did; I knew him for about twenty-nine years.

Q. Were you his attorney in his lifetime?

A. I have been his attorney for eighteen years, perhaps.

Q. Have you been the attorney of his estate in Ohio since his death?

A. I have.

Q. Has there been any other attorney, in the State of Ohio, of that estate?

A. Not to my knowledge.

Q. By a stipulation or from a stipulation signed by the solicitors of the parties to this suit, it appears there was an agreement executed by yourself, dated September 12th, 1874, with James B. Goodman, in respect to the payment of two notes executed by Joel D. Harvey, and payable to Thomas T. Renick, for $39,250 each. Did you execute that agreement?

194 A. I did; I executed an agreement of that date, copy is attached.

Q. Is it attached to the amended bill filed in this case?

A. I think it is; it is attached to some of the papers in the case.

Q. You executed it on the day of its date?

A. Yes, sir.

Q. Who was present at the time of its execution and delivery to M'r Goodman?

A. It was executed in M'r Goodman's office, and M'r Fay and myself were present. I do not remember whether any other parties were present or not.

Q. Where was it prepared?

A. I think the paper had been prepared by M'r Fay, and I either altered that or prepared another one at that time, in M'r Goodman's office.

Q. Was M'r Fay acquainted with the contents of that agreement at that time?

A. He was present at the time it was read over.

Q. So that he knew the contents of it?

A. I guess so.

Q. Those notes appear to have been given as part of the purchase price for the southwest quarter of section 10, township 39, the property described in the bill of complaint, the title of which was in Job R. Renick; had Job R. Renick, at the time of the conveyance of this property to Joel D. Harvey, any beneficiary interest in the property?

A. He held the legal title in trust.

Q. He had no beneficiary interest?

195 A. No; none whatever.

Q. Thomas T. Renick was then living, was he, July 15, 1872?

A. Yes, sir; Thomas T. Renick died in August, 1873.

Q. What interest had Thomas T. Renick in this property, if any?

A. Thomas T. was one of the devisees of Renick Huston.

Q. What other interest had he in this property?

A. He had no other interest.

Q. Had he advanced any money for the purpose of clearing the title of this property?

A. Thomas T. became administrator of Renick Huston; Renick Huston died in February, 1864, I think; the property was incumbered by tax claims and some judgments; Thomas T. had advanced some money to redeem it from those tax claims and those judgment liens; I don't know the exact amount; some twenty or twenty-five thousand dollars; but it had all been from the sales of the property refunded to him or paid to him out of the sales of the property prior to the—I was going to say prior to the sale to Harvey, but probably that was a part of it; I will say prior to the falling due of any of these notes.

Q. Had all the advances which had been made by Thomas T. Renick which he had made on account of this property, being repaid to him at the time of his death?

A. Yes, sir.

196 Q. Who was the owner of these notes at the time of his death—these two notes of $39,250 each, about which this controversy exists?

A. I understand they belong to Renick Huston's estate.

(Counsel for defendant objected to this answer.)

Q. Were you the attorney of that estate?

A. Yes, sir; I was attorney for that estate.

Q. How did you understand the estate of Renick Huston was the owner of these two notes?

(Objected to.)

A. Well, I have been attorney for Renick Huston's estate, and attorney for Thomas T. Renick, and my knowledge was derived from my knowledge of the business generally connected with those two estates. I am familiar with the estates from the death of Renick Huston. I drew Renick Huston's will, and also drew the will of Thomas T. Renick.

Q. Were you the confidential attorney then for both of these parties?

A. Yes, sir; Thomas T. Renick was the executor of Renick Huston's will.

Q. Was any other person that the estate of Renick Huston interested in these two notes?

A. No, sir.

Q. Did M'r Fay know the fact that these two notes belonged to the estate of Renick Huston as early as September 12, 1874?

A. I notified M'r Fay what we claimed for; that is, when I say we, as the administrator, and so forth, of Renick Huston; Job R.
197 Renick, the other administrator of Renick Huston, was present when we notified him to that effect at one time.

Q. When was that?

A. Prior to September 12, 1874; I can't say the exact date.

Q. Had you given M'r Fay—were you acquainted with the firm of B. F. Renick & Co.?

A. Yes, sir.

Q. Was that firm in existence at the time of the death of Thomas T. Renick?

A. It was formed—I can't state when that was formed, but it was formed after his death some time.

Q. They were doing business in the way of manufacturing chromatic printing-presses, at Canton, Ohio?

A. Yes, sir.

Q. Had you given M'r Fay any instructions with reference to allowing any of the property of the estate of Renick Huston to go into that firm, prior to September 12, 1874?

A. I had notified them that no part of it would be permitted to go there.

Q. That no part of the property of the estate of Renick Huston should not be permitted to go there?

A. Yes, sir.

Q. How early did you notify them to that effect?

A. I can't fix the date, but I know it was prior to September 12, 1874.

Q. Where was it?

198 A. Here in Chicago; I wrote to them also that no part of it must go there? I hadn't a copy of that letter with me, however.

Q. Was that before these notes were negotiated to J. C. Ayer & Co. and the Westboro Bank?

A. Yes, sir.

Q. When did you first learn the fact that these notes had been negotiated to J. C. Ayer & Co. and the Westboro Bank?

A. I learned that fact when I was here last winter, when these suits were brought. I first learned the fact that they had been negotiated ten days or two weeks prior to that time. I came up here as soon as I could get away from home after I learned the fact.

Q. And after you learned that, you came up to Chicago and learned that they had been negotiated to these parties?

A. Yes, sir.

Q. Then you had these suits brought?

A. Right away.

Q. Had you ever consented to the negotiation of these notes to any party?

A. No, sir.

Q. Did you know that one of them had been placed in New York of B. F. Remick?

A. No, sir.

Q. Where did you suppose the notes were?

A. I supposed they were here in Chicago in the possession of M'r Fay.

Q. Had you ever given any authority, either to M'r B. F. Renick or M'r Fay, for the delivery of them to B. F. Renick?

199 A. No, sir; M'r B. F. Renick came to me to get my consent, and I refused.

Q. You did not give your consent?

A. No, sir.

Q. It appears from the stipulation signed by the solicitors of these parties that M'r B. F. Renick executed an agreement in relation to these notes for extending the time of paying them, which was also placed in the hands of James B. Goodman, executed in February, 1875, but dated back to the 12th of September, 1874. When did you first learn of the existence of such an agreement?

A. Not until long after it was executed. I think not until the commencement of these suits; I can't fix that date.

Q. You did not learn of it until after the commencement of these suits?

A. I think not; certainly not until long after the execution of the instrument.

Q. You have no recollection of knowing the fact before these suits were commenced?

A. No; I have no recollection of knowing that until after these suits were commenced.

Q. The first agreement you signed you signed as one of the administrators de bonis non with the will annexed of Renick Huston, and as the attorney of the estates of Thomas T. Renick; were you the attorney of the estate of Thomas T. Renick at that time?

A. I was.

Cross-examination by M'r Goudy:

200 Q. M'r Smith, you say M'r Job R. Renick held the land in trust; was there any written declaration of trust or agreement
showing that trust?

A. No other signed; M'r Fay drew one up, but it was never signed.

Q. Then there was no written paper showing the trust?

A. No.

Q. No evidence of it in writing?

A. No evidence of it, I think.

Q. You think that Job R. Renick held it in trust?

A. It was at my instance it was bid off by him in trust, and I explained the matter to him when I went back to Circleville and wanted to get him to accept the trust.

Q. Were you present at the sale?

A. I was not present at the sale, but an arrangement was made prior to the time of the sale that it should be bid off by him.

Q. Who was that arrangement made with?

A. Thomas T. Renick was here, and M'r Bonney, M'r Fay and myself. I don't remember anybody else.

Q. Who were you acting for?

A. I was acting for Thomas T. Renick and for the for Thomas T. Renick as the executor of Renick Huston.

Q. Then, if I understand you correctly, there was some talk between you and Thomas T. Renick and M'r Bonney and M'r Fay prior to the time that M'r Job Renick had any title in regard to putting the title in Job Renick; is that correct?

101 A. Yes, sir; that is correct; it was put in his name in order to
facilitate the——

Q. I didn't ask you what it was.

M'r MILLER. Go on and state.

M'r GOUDY. I object to that.

Q. How long before the title was placed in Job Renick was the arrangement made that you refer to?

A. I can't state exactly, M'r Goudy. The arrangement was made when I was here, but the compromise or settlement of the various cases before the sale. The sale was had afterwards. It might have been four weeks and it might have been longer.

Q. Was a litigation pending in regard to the land?

A. Yes, sir.

Q. Were not the lands encumbered and were not the titles defective?

A. The lands were encumbered.

Q. Wasn't there a controversy about the title to the land?

A. The lands were encumbered by tax titles and by some judgments against Andrew Huston, the father of Renick Huston; Miss Marsh, a legatee of Renick Huston, and had a suit to compel the payment of her legacy.

Q. What sale do you refer to?

A. As a part of the arrangement in settlement between the pending parties it was agreed that there should be a judicial sale of the premises. That is the sale to which I refer, at which Job Renick bought.

202 Q. Who was the seller at that sale? Identify the sale in some way.

A. It was sold in one of those cases. There was a Doctor Dyer that represented a lot of the claims. Anna Marsh was a claimant under a legacy, and the sale was made in one of those cases.

Q. Was not a sale and a decree made in favor of Anna Marsh by Rosenthal, the administrator of Dyer Huston?

A. I can't say that, M'r Goudy; I never saw the record of it. I was here representing the case, but I was not here at the sale.

Q. Was there any money paid at the sale within your knowledge?

A. I was not here at the sale.

Q. So you can't answer?

A. At the time of the sale, however, Thomas T. Renick held by the claims, by purchase. I think he paid twenty thousand dollars for the whole thing, for the judgments and tax claims, and Anna Marsh's claim was in addition.

Q. Now you have stated in your examination-in-chief that two notes, each for $39,250, made by Harvey to Thomas T. Renick, were owned by the estate of Renick Huston; were not those notes payable to Thomas T. Renick?

A. Yes, sir.

Q. Was not Benjamin F. Renick the executor of Thomas T. Renick?

A. Yes, sir.

Q. What do you mean when you say they were owned by the estate of Renick Huston?

203 A. They were given for property that belonged to the Renick Huston estate.

Q. That is, you mean to say that these 80 acres on section 10, which has been mentioned, belonged to the Renick Huston estate, and was sold to Harvey, and these notes were given for it?

A. Yes, sir.

Q. And from those facts you say they were owned by the estate of Renick Huston?

A. Yes, sir.

Q. You have stated that you went back to Ohio and had a talk with Job R. Renick in regard to taking the land in trust. Was that talk before the title was put in him, or afterwards?

A. I think it was afterwards. We made this arrangement at Chicago, but it was before the sale.

Q. Who was present at that conversation?

A. Between Job and myself?

Q. Yes.

A. No one but Job and myself.

Q. Wasn't there some money to be paid in this sale by somebody to somebody, according to the arrangement that was made?

A. There was money paid to the holders of these claims?

Q. Money to be paid?

A. Yes, sir; to the holders of these claims, but whether it was paid at the time of the sale or not I can't answer. I think there was some money paid before the sale, and an extension of time, and some paid afterwards. I can't answer exactly.

Q. Who was to pay that money according to the arrangement that was made?

204 A. Well, Thomas T. Renick represented the entire Houston estate, and he was to pay that money.

Q. Had the Renick Huston estate any money in his hands out of which he could pay it?

A. No, sir; nothing but what was derived from this property.

Q. Then by the arrangement he was expected to advance that money, was he not?

A. By the arrangement he was to pay the money, but he had no resources except this property that belonged to the estate. When I speak of "this property," I speak of the property about Chicago, other property in addition to this particular tract.

M'r Skinner:

Q. Now, M'r Smith, you said, prior to the sale of this property to Harvey, Thomas T. Renick had made some advances; what were those advances he had made?

A. In amount?

Q. Yes; what was the amount and how did the advances come to be made?

A. My recollection is that the amount was somewhere in the neighborhood of twenty thousand dollars altogether that he advanced.

Q. To whom?

A. For the benefit of the estate, in paying off these various claims.

Q. Which estate?

205 A. Renick Houston's estate. You see there was one claim of Anna Marsh. That was five thousand dollars; there was this claim, then judgments; there were several judgments altogether, but they had been collected in the hands of a single person.

Q. But he had advanced, according to your belief, about twenty thousand dollars prior to the sale to Harvey?

A. I can't say it was advanced prior to that time, but I think it was.

Q. You afterwards stated that prior to the sale to Harvey, M'r Thomas T. Renick had been reimbursed for all these advances. How do you know he was reimbursed?

A. Well, there had been a large amount of property sold.

Q. Did you ever see any of the reimbursements?

A. Yes, sir; he brought some of the money home to help to pay these claims. I helped to make the calculation.

Q. Just how was Thomas T. Renick reimbursed for those advances?

A. Proceeds of the sale of the land; there was one tract of land known as the Rosehill property.

Q. To what estate did that property belong?

A. To the Renick Huston estate.

Q. Did you see the proceeds paid over to Thomas T. Renick?

A. Yes, sir; he told me that he got it.

Q. The only knowledge you have that he got it was by being told so?

206 A. By himself.

Q. How much did he ever tell you that he had got?

A. He told me the amount they had sold for. I think it was somewhere in the neighborhood of fifty thousand dollars.

Q. How much did he tell you he received?

A. I can't tell that now. I know, however, that out of the proceeds of the sales of these lands that belonged to that estate he made some loans after these advances had been repaid, and consulted me about making those.

M'r Miller:

Q. Borrowed them from the estate?

A. Out of the proceeds of the estate he made some loans, and consulted me about making them.

Q. Loans to himself?

A. And to other parties.

M'r Skinner:

Q. Weren't those transactions for the Harvey sale after the Harvey sale?

A. I can't exactly say, but I think some were before the Harvey sale and some afterwards, but there was thirty-nine thousand dollars cash in hand from the Harvey sale.

M'r Miller:

Q. Who got that?

A. Thomas Renick got that, of course.

M'r Skinner:

Q. Now, as between Thomas T. Renick and any other interested parties, have you any knowledge of an actual settlement of these advances?

207 A. The matter and his accounts, as he died, was settled with the probate court. There never was any settlement between them.

Q. There never was?

A. No, sir.

Q. And that is the only way that you know it?

A. Yes, sir; that he got money, and out of it he made loans to other parties.

Q. But you also state you couldn't tell how much money he received?

A. No, sir; I couldn't tell.

Q. Further on in your examination you state that the estate of Renick Huston were the owners of these notes, and that you knew they had a claim to these notes by reason of your familiarity with the affairs of the estate of Renick Huston and of Thomas T. Renick. Now, was not the interest of Thomas T. Renick in the estate of Tower, Classen & Co. continued after his death?

A. The will disposes of it.

Q. Well, as a matter of fact, was not Thomas Renick's interest in the firm of Tower, Classen & Co. continued after his death?

A. I hardly know how to answer that, M'r Skinner.

Q. You can tell whether you know or not.

A. Ben. Renick went right in. I know the will provided—gave it to Ben. Renick and to nine of his nephews and his nieces, making
208 ten shares of it—and gave his interest in that concern in trust to Ben. and these other nine nephews and nieces.

Q. You was counsel, you state, for the estate of Thomas T. Renick?

A. Yes, sir.

Q. Now, as counsel, and from the familiarity you had with his affairs and his estates, don't you know whether his interest in the firm of Tower, Classen & Co. was continued?

A. I know that Ben. went along in that shape.

Q. Don't you know that his interest was continued?

A. That is a legal question I can't answer.

Q. Was not his interest as a copartner continued?

A. There was no dissolution, no settlement of the firm transactions.

Q. After Thomas T. Renick died, did you act as attorney or have any knowledge of the details of the business of the old firm of Tower, Classen & Co., or of B. F. Renick & Co. succeeding it?

A. I have had a limited knowledge of the business of Tower, Classen & Co. I had scarcely any knowledge of the business of B. F. Renick & Co.

M'r Goudy:

Q. You have spoken of other tracts of land, one of them called the Rosehill tract of land; were those different tracts of land about Chicago that you have mentioned all in Job R. Renick?

A. Yes, sir; the whole.

209 Q. So that whatever arrangement was made about one was made about all?

A. Yes, sir.

Q. Did Thomas T. Renick ever make any report or statement in writing of the estate of Renick Huston, showing that he held or managed these lands in trust?

A. No, sir; I don't think he ever did.

Q. So far as the records in Ohio are concerned, there is no written evidence there of any statement by Thomas T. Renick showing that Renick Huston owned these lands, and that Job Renick held them in trust?

A. No, sir, there is no record there one way or the other; the records simply show the appointment of Thomas T. Renick as the executor of Renick Huston; the records don't show anything about it.

Q. Now, in the sale of the land to Joel D. Harvey the notes were taken by Thomas T. Renick as an individual?

A. Yes, sir.

Q. Now, were the notes which he obtained on the sale of other lands taken in the same way?

A. I don't know that, M'r Goudy; those notes were drawn by M'r Fay.

Q. Did you ever see any note or paper relating to the sale of these lands that alluded to the estate of Renick Huston?

A. That I cannot answer, because I always understood——

210 Q. I want to know if you ever saw any such paper?

A. I can't answer you that, whether I ever did or not

Q. Thomas T. Renick told you that he had received out of the proceeds of these lands enough to pay him for the advances he had made?

A. I can't state it in that language, M'r Goudy, but I understood from him he got his money all back, and more too.

Q. Did he ever make any settlement with you as the executor of Renick Huston's estate?

A. No, sir; I was not administrator until Thomas Renick's death.

Tom Renick was executor, and I was afterwards appointed administrator de bonis non, with the will annexed.

Q. You have spoken of claims that were paid by Thomas T. Renick, and which were involved in suits. Were those claims against Thomas Renick's estate or Andrew Huston's?

A. Against Andrew Huston's estate.

Q. And these liens which you speak of were liens against the land by Andrew Huston, were they not?

A. Where they were judgments they were, but where they were tax claims I can't answer without an examination of the records.

M'r Skinner:

Q. Prior to Thomas T. Renick's death, what were your professional relations, if any, to the estate of Andrew Huston and to the estate of Thomas T. Renick?

211 A. I was generally the attorney for Thomas, and Thomas was the executor of Renick Huston and administrator, with the will annexed, of Andrew Huston.

Q. The only professional relation you had to the estate, prior to Thomas Renick's death, was the fact of your being attorney for him as administrator?

A. Yes, sir; prior to Thomas Renick's death.

Q. Then prior to Thomas Renick's death, as you were only attorney to him as administrator for those two estates, there could not have been any settlement between you and him with reference to any advances he made in the matter?

A. No settlement between him and me.

Q. But you would have been the proper person to settle with?

A. I was entirely familiar with the estates.

Q. If he had made any such settlement you would have been apt to know it, as his professional adviser?

A. Of course I would.

Q. But you don't know of any such settlement, you say?

A. I don't know of any; if he had made any I should have known of it.

Q. For what purpose was the title placed in Job Renick?

(Objected to. Question withdrawn.)

212 (Endorsed:) Filed July 15, 1876. W. H. Bradley, cl'k.

213 Complainants thereupon read in evidence the following stipulation:

United States circuit court, northern district of Illinois.

PALMER C. SMITH ET AL.
vs.
JAMES C. AYER ET AL.

SAME
vs.
FIRST NATIONAL BANK OF
Westboro', Mass.

It is hereby admitted, as a part of the evidence in the above-entitled causes, that the agreement signed by "P. C. Smith, one of the adm'r' and attorneys for the estate of Ren. Huston, and Tho's T. Renick," and dated Sept. 12th, 1874, a copy of which is attached to the answer of Henry H. Porter, William H. Ferry, and James B. Goodman, trustee, et al.; was delivered to James B. Goodman at his office in Chicago on the day of its date, and has been with said Goodman ever since, and is now in the possession of said Goodman; and that said agreement or said copy may be read in evidence without objection as to form. It is further stipulated, as aforesaid, that the further agreement, a copy of which is attached to said answer, and which agreement is dated September 12th, 1874, and signed by Benj. F. Renick, executor of the last will of Thomas T. Renick, deceased, was executed on or about the 214 first day of February, A. D. 1875, and delivered to said Goodman on or about said last-named day, and has ever since been in the possession of said Goodman, and that said agreement or said copy may be read in evidence without objection as to form.

Dated Chicago, July 12, 1876.

GOUDY, CHANDLER AND SKINNER,
Att'ys for Def'ts J. C. Ayer & Co., and
The First National Bank of Westboro'.
MILLER AND FROST,
Sol'rs for Compl'ts.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

Complainants thereupon read in evidence, subject to the objection of the defendants as to competency, the following contract:

Whereas Joel D. Harvey did heretofore execute, among other things, two promissory notes bearing date July 15, 1872, for the sum of ($39,250.00) thirty-nine thousand two hundred and fifty dollars, each payable respectively to the order of Thomas T. Renick in two and three years after the date thereof, which notes were given as a part consideration for the sale of the W. ½ of S. W. ¼ of sec. 10, 39, 13 (except so much as had been before conveyed and was used for a railroad), situate in the county 215 of Cook and State of Illinois, and which notes are now the property of the estate of Renick Houston, deceased; and whereas there is a suit now pending in the court of common pleas of Pickaway County, Ohio, affecting the property of said estate; and whereas it is desirable to the interest of said estate that said money sh'ld be invested until the termination of said suit; and whereas the West Chicago Land Company have assumed the payment of the said notes, together with the interest thereon, and the s'd West Chicago Land Co. desires a postponement of the payment of both the s'd notes for a time: Now, therefore, I, P. C. Smith, of the said county of Pickaway and State of Ohio, one of the adm'rs de bonis non, with the will annexed, of said Renick Houston, and att'y for said estate, do hereby say that I will not press the payment of said two notes until such time as I shall require the s'd money to be paid by reason of the termination of the said suit. The extension of the time of the payment of said two notes shall not, in any event, be for a time exceeding two years upon each of said notes, from the time when each of the said notes respectively become due and payable by the written terms thereof.

And further, the said maker of s'd notes (or the said West Chicago Land Co.) are to pay interest upon the amount of said notes at the rate of eight per cent. per annum, payable annually.

216 And I hereby consent that the trustee, in the trust deed securing the payment of the said notes, may release therefrom the south forty acres from the said trust, upon the said Harvey or the s'd

West Chicago Land Co. furnishing to him to hold as collateral security for the payment of said notes, in addition to the security of said trust deed, upon the residue of said tract of land in said trust deed conveyed, notes (together with the deed of trust securing the same) of the individuals with whom the said West Chicago Land Co. have made a contract for the sale of the said south forty acres or thereabouts, for the sum of ninety-six thousand ($96,000) dollars, to become due one-half July 15, 1876, and one-half July 15, 1877, with interest payable annually at the rate of 8 p'r c. per annum, secured by deed or deeds of trust upon the s'd land, and shall furnish to said trustee for examination a proper abstract of title showing a good title in said individuals, the makers of said collateral notes, at the time of their being so given to s'd trustee, and the release being made.

It is understood that the s'd Joel D. Harvey and said West Chicago Land Co., upon the payment of all unpaid purchase-money for s'd premises, together with all the accrued and accruing interest thereon, except the principal of the 2 notes above mentioned, are entitled to and shall have a release of 20 acres of said lands from the said trust deeds,
217 in addition to s'd forty acres to be released, upon the conditions
hereinbefore set forth as provided for in s'd deed of trust made by said Joel D. Harvey.

Sept. 12, 1874.

P. C. SMITH,
One of the Adm'rs and Att'y for the Estate of
Ben. Huston and Thos. T. Renick.

218 Complainants then read in evidence the following stipulation:

In the circuit court of the United States for the northern district of Illinois.

IN RE PALMER C. SMITH ET AL.
v.
J. C. AYER ET ALS.

PALMER C. SMITH ET AL.
v.
THE FIRST NATIONAL BANK OF
Westboro' et als.

It is hereby stipulated in the above-entitled causes that the twenty-four notes for the sum of $4,000 each, aggregating the sum of $96,000, are in the hands and custody of J. Edwards Fay, pursuant to the recitals contained in the agreement of Benjamin F. Renick, dated Sept. 12th, 1874, and to the receipt dated July 21st, 1875, given to Henry H. Porter, William H. Ferry, and James B. Goodman, as trustees of the West Chicago Land Company, and copies of which are attached to the answers of said Porter, Goodman, Ferry, and Campbell, to which reference is made for a more full statement thereof; and it is further stipulated that said complainants have leave to amend their bills by inserting the name of Joel D. Harvey in the place of that of James B. Goodman, in the statement relating to the paper alleged by him to
219 have been left with said Goodman on the 12th Sept., 1874.

GOUDY, CHANDLER AND SKINNER,
Att'ys for Defendant, J. C. Ayer and Co., and
The First Nat'l Bank of Westboro'.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

The complainants then read in evidence the letters of administration to Palmer C. Smith and Job R. Renick, with their authentication, and the copies of the proceedings of the court containing the resignation of B. F. Renick as executor of the estate of Thomas T. Renick, and the appointment of Edward J. Van Meter in his place, and the letters of administration to Edward J. Van Meter, which are heretofore set out in this record on pages 21 et seq. and 87 et seq., respectively.

220 Defendants thereupon read in evidence the following:

Statement of J. Edwards Fay, to be used on the trial of the above-entitled cause.

United States circuit court, northern district of Illinois. In chancery.

PALMER C. SMITH AND JOB R. RENICK, administrators de bonis non, &c., of Renick Huston, deceased,

vs.

CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick; Benjamin F. Renick, executor, &c.; the First National Bank of Westboro', Mass.; Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company; George C. Campbell, Edward L. Davidson, Anthony McElroy, Charles B. McElroy, and John J. McElroy.

The two notes for $39,250 made by Joel D. Harvey, and payable to the order of Thomas T. Renick, were held in escrow by Geo. C. Campbell, esq., until some time early in the year 1875, not far from the first of February of that year, at which time they were delivered by said Campbell to me as the attorney of the legal representative of Thomas T. Renick. These were the two notes which, by their written terms, would have become due respectively July 15th, 1874, and July 15, 221 1875, but the payment of which had been extended for a period not exceeding two years from the time each note respectively became due by its written terms, and they were thus held in escrow until certain matters relating to the title of the land for part purchase-money of which the said notes were given were perfected and the abstract of the title made satisfactory to M'r Campbell. Almost immediately, if not the same day within a day or two after, I received the notes from M'r Campbell I delivered the one now held by the First National Bank of Westboro', Mass., to said Benjamin F. Renick, as the executor of Thomas T. Renick, deceased, on his demand or request therefor. The note was used during the months of February or of March, 1875, by said Benjamin F. Renick (he having endorsed and assigned it as such executor) as collateral security with one Saxton, either at Canton, Ohio, or in New York City, for a loan to the firm of B. F. Renick & Co., as I am informed.

In June, 1875, the firm of B. F. Renick & Co. desired a loan of $30,000 or upwards, and at request of said B. F. Renick I went with him to New York City to endeavour to aid him in procuring such loan. Col. Claussen, one of the partners of said firm of B. F. Renick & Co., was then in New York. Said B. F. Renick proposed to secure the payment of such a loan by the note then held by said Saxton as aforesaid. Some

222 correspondence was had with Mess. J. C. Ayer and Co., of Lowell Mass., who had on the 29th day of May, A. D. 1875, loaned the firm of B. F. Renick & Co. $39,250 to become due July 15th, 1877, upon the other note made by said Harvey for $39,250 as collateral security, and such was the prospect of obtaining the money from them that, by instruction of said B. F. Renick and said Claussen, I went to Lowell to endeavour to complete the transaction. Mess. J. C. Ayer & Co. finally declined to make the loan. I learned that it might be possible to obtain the money from the First National Bank of Westboro', Mass., and made the application to it. I had with me the note made by Harvey which had been taken up from Saxton, but no other papers relating thereto. The only paper shown the bank was the said Harvey note, but I told them that Mess. J. C. Ayer & Co. had on the last of May loaned the money loaned by them as aforesaid upon the said note of Harvey first to become due as collateral, and that in so doing Mess. J C. Ayer and Co. had an examination of the security made by Hon. W. C. Goudy, one of the most eminent lawyers of Chicago, and that he approved the same. The bank accepted the application and I returned to New York and procured the necessary notes from B. F. Renick and Co. and returned to Westboro' and completed the transaction.

The bank loaned Mess. B. F. Renick and Co. the sum of thirty
223 thousand dollars upon their note for that amount, dated June 21st, 1875, payable at the First National Bank of Chicago, Ill's, on July 15th, 1876, with interest after due at ten per cent. per annum, and the note of B. F. Renick and Co. of like date for $1,500 for interest on said principal note (the balance of interest was deducted from the principal by agreement), and the said note of said Harvey as collateral. The said Harvey note had an endorsement upon the back showing that the payment had been extended for a period not exceeding two years from July 15th, 1875, as per contract of September 12th, 1874, in hands of James B. Goodman, esq., which I think was signed by B. F. Renick, as executor of Thomas T. Renick, dec'd, and also by myself as trustee in the trust deed securing same.

The said Harvey note was also duly assigned to said bank by Benjamin F. Renick, as executor of the will of Thomas F. Renick, deceased.

The said First National Bank of Westboro' was also promised by me a copy of the opinion of M'r Goudy in the matter of the Ayer and Co. loan, and I procured the same for the bank, but it was not received by me and was not delivered by me to the bank, until after the loan made by them had been completed, but I know that the bank was influenced by my statement to them of the Ayer and Co. transaction and
224 the fact that M'r Goudy had approved the security, as M'r Goudy was well known by reputation at least to some of the directors of the bank.

I know that no person in any way connected with the bank had any knowledge whatever of any such person as Renick Huston or that any person or persons claimed any interest in the said Harvey note as the representatives of said Renick Huston or of his estate or of the said Job R. Renick or that he ever had any connection or relation whatever to the lands for which said note was given.

I made the application to them on behalf of B. F. Renick & Co. They examined the commercial reports of the financial standing of B. F. Renick & Co., which reports all reported the firm as having at that time a very excellent financial rate. I told them that M'r Benjamin F. Renick was the executor of Thomas F. Renick, dec'd, to whom the note was payable, and that as such he had made the endorsement or assignment

of the note; the note that was good and would bear interest from July 15th, 1875, at eight per cent. per annum; that I was the trustee in the trust deed securing the same, and the amount and situation of the land said trust deed was a lien upon, of the agreement with the West Chicago Land Company to release a portion of said lands upon placing in my hands other securities to be held as collateral to said Harvey note,
225 and that the matter had been examined and approved by M'r Goudy as aforesaid. Some of the directors had some knowledge of the general value of the land described in said trust deed, and that is all the information or knowledge whatever had by the bank or any of its officers in the matter.

At the time of the making of the loans by said J. C. Ayer & Co. and said First National Bank of Westboro' to said B. F. Renick and Co., I had been informed that the said business of B. F. Renick and Co. was then in a good condition and that they were making a profit of from $1,000 to $2,000 per month, and that all they needed was to so arrange their indebtedness, a large proportion of which was then due, that they could have time, such as the making of the said loans would give them, and they would be amply able to pay all the said loans and the interest thereon promptly. I had also been informed, by information which I deemed entirely reliable, that said B. F. Renick was himself worth from $150,000 to $200,000, and that he was individually fully able to pay the entire indebtedness of the said firm. He also told me himself that he considered his personal responsibility financially to be ample for all the said debts aside from his interest in the property of the firm of B. F. Renick and Co., and I had not the slightest doubt that the firm was solvent and was entitled to the high commercial rank then given
226 it by the commercial reports of the country as aforesaid.

At the time of the making of the Ayer and Co. loan and the examination of the matters by M'r Goudy he, upon an inspection of the Harvey note taken by said Ayer & Co. as collateral security for said loan, was informed by me that said B. F. Renick intended the said funds to be used in the business of the firm of B. F. Renick and Co., and that said B. F. Renick claimed the right to use the said note as collateral security as proposed under the will of Thomas T. Renick, and a copy of Thomas T. Renick's will was thereupon produced and examined by M'r Goudy in connection with the transaction.

After the death of Thomas T. Renick, who was one of the partners in the firm of Tower, Claassen and Co., Benjamin F. Renick, the executor of said Thomas T. Renick, purchased the interest of said Tower in said firm. The firm at the death of Thomas T. Renick consisted of Peter G. Tower, Peter J. Claassen, and Thomas T. Renick. Upon the purchase of the interest of said Tower by said B. F. Renick, which was on or about March 2d, 1874, the firm-name was changed to B. F. Renick and Co., and a new partnership agreement was made by and between said Benjamin F. Renick on his own behalf, and as the executor of Thomas T. Renick, deceased, and said Peter J. Claassen, but the only
227 change made in the said business thereby was that said B. F. Renick took the interest and place of said Tower, and the change of the name of the said firm as aforesaid.

July 13th, 1876.

J. EDWARDS FAY.

The foregoing statement is to be received as the testimony of J. Edwards Fay, the same as if given in a deposition, and no objection is to be taken to any part of it because not in the personal knowledge of the witness.

MILLER & FROST,
Sol'rs for Comp'ts.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

228 Defendants thereupon read in evidence the following contract:

Whereas Joel D. Harvey, of Chicago, Illinois, did heretofore execute among other things two certain promissory notes bearing date the 15th day of February, A. D. 1872, each for the sum of thirty-nine thousand two hundred and fifty dollars ($39,250) each, payable respectively to the order of Thomas T. Renick in two and three years after the date thereof, which said notes were given as a part of the consideration for the sale of the premises situate in the county of Cook and State of Illinois, known and described as the W. ½ of S. W. ¼ of sec. 10, T. 39 N., R. 13 E. of 3d P. M., except so much thereof as had before been conveyed to the Galena and Chicago Union (now the Northwestern) Railway Company for a right of way; and

Whereas the said Thomas T. Renick had deceased since the said notes were given, and by reason of divers matters and things connected with his estate the said estate cannot be settled for a very considerable time, and it is for the interest of his estate that the said money to become and having become due upon said note shall be invested until it shall be required for the final settlement of the said estate; and

Whereas the said West Chicago Land Company have assumed the
payment of the said notes together with the interest thereon, and
229 the said West Chicago Land Company desires a postponement of
both the said notes for a time:

Now, therefore, I, Benjamin F. Renick, of the county of Pickaway and State of Ohio, the sole executor of the last will of the said Thomas T. Renick, late of said county of Pickaway and State of Ohio, deceased, do hereby say that I will not press the payment of the said two notes until such time as I shall require the said money to be paid to me to make settlement of the said estate, provided that the extension of the time for the payment of the said two notes shall not in any event be for a period exceeding two years upon each of said notes from the time when each note, respectively, becomes due and payable by the written terms thereof upon the said notes, and also the said makers of said notes, or the said West Chicago Land Company, are to pay interest upon the amount of said notes at the rate of eight per cent. per annum, payable annually on the fifteenth day of July of each and every year till the said notes shall be fully paid.

And I hereby consent that the trustee in the trust-deed securing the payment of the said notes may release therefrom the south forty acres of the said tract of land upon the said Harvey or the said West Chicago Land Company furnishing to him to hold as collateral security for the
payment of the said notes and interest in addition to the security
230 of the said trust-deed upon the residue of the said premises herein
above and in said trust-deed described (and conveyed by said
trust deed to J. Edwards Fay, trustee) notes with proper deeds of trust securing the same of the person or persons with whom the said West Chicago Land Company has made a contract for the sale of the said South forty acres or thereabouts for the sum of ninety-six thousand dollars ($96,000) to become due and payable one-half on the fifteenth day

of July, A. D. 1876, and one-half on the fifteenth day of July, A. D. 1877, with interest payable annually at the rate of eight per cent. per annum secured by deed or deeds of trust upon the said land, and shall furnish the said trustee for examination a proper asbtract of title showing a good title in said individuals the makers of said collateral notes at the time of their being so given to said trustee and the release being made.

It is understood that the said Joel D. Harvey and the said West Chicago Land Company upon the payment of all unpaid purchase money for said premises with all accrued interest thereon except the principal of the two notes above mentioned are entitled to have a release of twenty acres of said land from said trust-deed to said Fay in addition to said forty acres to be released from the conditions herein above and in said trust-deed set forth.

Chicago, Sept. 12th, 1874.
231 (Signed) BENJAMIN F. RENICK,
Executor of the last will of Thomas T. Renick, deceased.

In consideration of the above statement and request, I hereby agree to release the south forty acres of the tract above described upon the terms and conditions specified in the foregoing statement.

Chicago, Sept. 12th, 1874.
(Signed) J. EDWARDS FAY, *Trustee, &c.*

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

Defendants thereupon read in evidence the will of Thomas T. Renick.

In the name of God, amen.

I, Thomas T. Renick, of Pickaway County, O., being of sound mind and memory, do make and publish this my last will and testament.

1st. I direct that all my just debts be paid.

2nd. I give and devise to my brother Job R. Renick all my interest in the home farm where we now reside, it being my desire to keep the said farm in the Renick name and family.

3rd. Whereas I have a large interest in some coal and coke property in Southern Central Illinois, known as the S't Louis Coal and Coke Company, and the Sparling Lime Company, the original cost of my interest in said company being $5,000.00, which was paid for out
232 of the funds belonging to myself and my brother Job R., and
whereas I have loaned to said companies the sum of about $10,000 to redeem the same from a sale made on execution, the said loan being made out of funds that belonged to myself, my sister Mary Gregg, and the children of my deceased brother Jonathan Renick. In order to close up said transaction in the most speedy manner I give and bequeath all my interest in the said companies, together with the sum so loaned by me as aforesaid, to my brother Benjamin F. Renick in trust, to collect the money so loaned as soon as practicable, and as fast as the same is collected to pay the same over, the $\frac{1}{3}$ part thereof to my said sister Mary Gregg, the $\frac{1}{3}$ part thereof to my nephews and nieces, the children of my deceased brother Jonathan Renick, and the other $\frac{1}{3}$ to be disposed of by my said trustee, Benjamin F., as is provided for in the 9th item of this my last will. And I further direct that all my interest in the said property and companies be sold by my said trustee either at public or private sale for cash or upon such terms of credit as he in his wisdom shall think best, and the said sum of $5,000.00, together with the interest thereon, shall be refunded or repaid to the firm-account of myself and brother

Job; that is, giving to Job the $\frac{1}{2}$ part thereof and the residue to be disposed of as is provided for in the 9th item of this my last will and testament.

233 4th. Whereas I have and hold in my name an interest in the
firm of Tower, Classen and Co., manufacturers of chromatic printing presses, which company are manufacturing said printing presses at Canton, Ohio, and which interest was paid for out of funds belonging $\frac{1}{3}$ to myself, $\frac{1}{3}$ to my sister Mary Gregg, and $\frac{1}{3}$ to my nephews and nieces, the children of my brother Jonathan Renick, dec'd.

It is my request that the whole interest in said company be held and retained so long as my brother Benjamin F. Renick may in his discretion think the same will be profitable, and I desire that the same shall be under the control and management of the said Benjamin F., and as to my interest in the same, I desire that it shall be held, controlled, and managed by my said brother Benjamin F., for the benefit of himself and my nephews and nieces, the children of my sister Catherine Darst, dec'd; the children of my brother Jonathan Renick, dec'd; and Harry R. Gregg, the son of my sister Mary Gregg, share and share alike; and I give and bequeath all my interest in said company to my said brother Benjamin F. Renick in trust for himself and my said nephews and nieces above named, in equal proportions, to be held, retained, and controlled by my said brother Benjamin F. so long as he in his discretion may
deem advisable; my meaning is that each nephew and each niece
234 is to take one share with my brother Benjamin.

5th. I direct that my executor shall pay to my brother Felix Renick the sum of $500.00 per year, the 1st payment to be made in one year after my death, and the sum of $500.00 to be paid to him at the end of each and every year thereafter so long as said Felix may live.

6th. I give and bequeath to my beloved mother-in-law, Maria Brown, my gray horse "Doc."

7th. I direct my executor, hereinafter named, to build a good, substantial iron fence around the graveyard on the farm belonging to myself and my brother Job R. Renick.

8th. As to the partnership existing between myself and my brother Job, we having kept no accounts of the said partnership as between ourselves, I will and direct that my executor, hereinafter named, in making a settlement of said partnership matters, take the statement of my said brother Job, and any statement of said partnership accounts that my said brother Job may make, I will and direct that the same shall be forever binding on my executor, heirs, and legatees, and all of them.

9th. All the rest of and residue of my property of every kind and description I give and bequeath to my nephews and nieces, the children of
my sister Catherine Darst, dec'd; the children of my deceased
235 brother Jonathan Renick, and Harvey R. Gregg, son of my sister
Mary Gregg, share and share alike, giving to each nephew and niece one share.

10th. It is my will and I so direct that the bequests given in the third item in this my will to my sister Mary Gregg, and to my nephews and nieces, the children of my dec'd brother Jonathan Renick, shall be taken by them in full satisfaction of their interest in the fund so loaned as is therein stated, and upon the receipt of the same they shall have no claim against me either in my individual capacity or as trustee.

11th. I hereby nominate and appoint my brother Benjamin F. Renick, executor of this my last will and testament, and having every confidence in his integrity, I direct that no bond be required of him as such executor.

In testimony whereof I have hereunto set my hand and seal this 1st day of Aug., 1873.

[SEAL.] THOMAS T. RENICK.

Signed, sealed, and acknowledged by Thomas T. Renick as his last will and testament in our presence, and signed by us in his presence and at his request.

P. C. SMITH.
JA'S M. REEVES.

THE STATE OF OHIHO,
Pickaway County, ss:

We, P. C. Smith and Ja's M. Reeves, being duly sworn, in open
236 court, this 12th day of August, A. D. 1873, depose and say that
we were present at the execution of the last will and testament of Thomas T. Renick, hereunto annexed; that we saw the said testator subscribe said will and heard him publish and declare the same to be his last will and testament; and that the said testator, at the time of executing the same, was of full age and of sound mind and memory, and not under any restraint, and that we signed the same as witnesses at his request and in his presence, and in the presence of each other.

P. C. SMITH,
JA'S M. REEVES.

Sworn to and subscribed in open court this 12th day of August, A. D. 1873.

JAMES TAYLOR,
Probate Judge.

I hereby certify the foregoing to be a true copy of the original will of Thomas T. Renick, as on file and record in this office.

August 13th, 1873.

[SEAL.] JAMES TAYLOR,
Probate Judge.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.
[SEAL.] H. W. BLODGETT, *Judge.*

237 (Endorsed:) Filed July 31, 1876. W'm H. Bradley, clerk.

Afterwards, to wit, on the 16th day of August, A. D. 1876, said complainants filed in said clerk's office their bond in appeal in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

PALMER C. SMITH AND JOB R. RENICK, administrators de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Renick, deceased, complainants,

vs.

CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, The First National Bank of Westboro', Massachusetts, Joel D. Harvey, and Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, defendants.

} In equity.

238 Know all men by these presents that we, Palmer C. Smith and Job R. Renick, administrators de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Renick, deceased all of Pickaway County, in the State of Ohio, and Henry G. Miller, of Chicago, Cook County, Illinois, are held and firmly bound unto Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, Benjamin F. Renick, The First National Bank of Westboro', Massachusetts, Joel D. Harvey and Henry H. Porter, William H. Ferry and James B. Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, in the sum of one thousand dollars, to be paid to the said Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, Benjamin F. Renick, The First National Bank of Westboro', Massachusetts, Joel D. Harvey and Henry H. Porter, William H. Ferry and James B. Goodman, trustees of The West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, their executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators,
239 firmly by these presents, sealed with our seals, dated this fifth day of August, A. D. 1876.

Whereas the above-named Palmer C. Smith and Job R. Renick, administrators de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Renick, deceased, have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named Palmer C. Smith and Job R. Renick, administrators de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Renick, deceased, shall prosecute their said appeal to effect and answer all costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

PALMER C. SMITH.
JOB R. RENICK.
ED. J. VAN METER.
HENRY G. MILLER.

Sealed and delivered in presence of—
JOB E. STEVENSON.

Approved.

H. W. BLODGETT, *Judge.*

240 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Palmer C. Smith and Job R. Renick, administrators de bonis non of the estate of Renick Huston, deceased, are the complainants, and Charles C. Bonney et al. are the defendants, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 6th day of October, A. D. 1876, and of our Independence the 101st year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

241 UNITED STATES OF AMERICA:

In the Supreme Court of the United States. October term, 1876.

PALMER C. SMITH & JOB R. RENICK, administrators de bonis non with the will annexed of the estate of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of the estate of Thomas T. Renick, deceased, appellants,

vs.

THE FIRST NATIONAL BANK OF WESTBORO', Massachusetts, Joel D. Harvey, Henry H. Porter, William H. Ferry, & James B. Goodman, trustees of the West Chicago Land Company; George C. Campbell, Anthony McElroy, Edward H. Davidson, Charles B. McElroy, John J. McElroy, Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, and Benjamin F. Renick, appellees.

And now come the appellants, by Miller & Frost, their solicitor, and say that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st. The court below erred in not rendering a decree in said cause in favor of the complainants for the relief prayed.

2nd. The decree of the court below is contrary to equity.

3d. The court below erred in dismissing said bill.

By reason whereof the appellants pray that said decree my be reversed.

T. G. FROST,
For Appellants.

MILLER & FROST.

(Indorsement on cover:) No. 222. Palmer C. Smith, Job R. Renick, adm'rs of Renick Huston, dec'd, & Edward J. Van Meter, adm'rs of Thomas T. Renick, dec'd, appellants, vs. The First National Bank of Westboro', Mass., Joel D. Harvey, Henry H. Porter, William H. Ferry, et al. N. Illinois C. C. U. S. Filed 11th October, 1876.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1878.

No. 222.

PALMER C. SMITH and JOB R. RENICK, Administrators of Renick Huston, deceased, and EDWARD J. VANMETER, Administrator, &c., of Thomas T. Renick, dec'd, *Appellants,*

—*vs.*—

THE FIRST NATIONAL BANK OF WESTBORO, MASS., JOEL D. HARVEY et al. *Appellees.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief and Argument in Behalf of Appellants.

MILLER & FROST, *Att'ys for Appellants.*

CHICAGO:
PRESS OF BEACH, BARNARD & CO., LEGAL PRINTERS, NO. 104 RANDOLPH STREET.
1879.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1878.

No. 222.

PALMER C. SMITH and JOB R. RENICK, Administrators of Renick Huston, deceased, and EDWARD J. VAN METER, Administrator, &c., of Thomas T. Renick, dec'd, *Appellants*,

—*vs.*—

THE FIRST NATIONAL BANK OF WESTBORO, MASS., JOEL D. HARVEY et al. *Appellees.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF CASE.

This case is brought here by appeal from a decree of the Circuit Court of the United States, for the Northern District of Illinois, dismissing appellants' bill of complaint for want of equity.

The bill of complaint was filed in the Superior Court of Cook County, Feb. 3, 1876, by Palmer C. Smith and Job R. Renick, as administrators, *de bonis non* with the will annexed of the estate of Renick Huston, deceased, against Charles C. Bonney, J. Edwards Fay and Charles W. Griggs, composing the firm of Bonney, Fay & Griggs, Benjamin F. Renick, and Benjamin F. Renick as executor of the estate of Thomas T. Renick, deceased, The First National Bank of Westboro, Mass., Joel D. Harvey, and William C. Goudy and George Chandler, composing the firm of Goudy & Chandler.

The bill alleges that Renick Huston died in February, 1864, in Pickaway County, the county of his residence, in the State of Ohio, testate, and that letters testamentary issued to Thomas T. Renick, February 12, 1864. (The will and letters were filed with the bill, and made a part of it.) That Thomas T. Renick of that county, died testate in August, 1873, and letters testamentary upon his estate were issued in the same month to Benjamin F. Renick, and that complainants on the 5th of Sept., 1873, were appointed administrators *de bonis non*, with the will annexed of the estate of said Renick Huston. That said Renick Huston, at the time of his decease, was seized in fee of the W. ½ of S. W. ¼ of section 10, Town 39, Range 13 East, in Cook County, Illinois. That the title to this land was after his decease, transferred and became vested in Job R. Renick, one of the complainants, who held it in trust for the estate of Renick Huston. That Charles C. Bonney and J. Edwards Fay, doing business under the firm name of Bonney & Fay, and who afterwards became associated with Mr. Griggs, and doing business under the name of Bonney, Fay & Griggs, were the attorneys and legal advisers of Thomas T. Renick, and after his decease, of his executor Benjamin F. Renick, and also of complainants as administrators of the estate of Renick Huston, and well knew that Job R. Renick had no beneficial interest in the land, but held it in trust for the estate of Renick Huston.

That on the 15th of July, 1872, Thomas T. Renick, as executor of the estate of Renick Huston, sold said land to Joel D. Harvey for $150,000—$39,250 cash, and the balance in three annual payments of $39,250 each, with interest secured by three notes, made by Joel D. Harvey, and payable in one, two and three years respectively, from July 15, 1872. That Job R. Renick conveyed the land to Harvey in pursuance of the sale, and that Harvey, at the same time, conveyed the land in trust to J. Edwards Fay, to secure the payment of the notes, and that the notes and trust deed were left in the custody of Bonney, Fay & Griggs as the attorneys of the estate of Renick Huston, and to be held for the benefit of that estate and as said attorneys well knew, as the sole property of the estate of Renick Huston. That after their appointment complainants were importuned by parties interested in the firm of B. F. Renick & Co., of Canton, Ohio, composed of Benjamin F. Renick and Peter G. Classen, and carrying on the business of manufacturing chromatic printing presses, to allow some portion of the proceeds belonging to the estate of said Renick Huston to be loaned to said firm, or invested in said business, and complainants uniformly rejected such importunities, and took the precaution of distinctly stating to said Bonney, Fay & Griggs, attorneys of said estate, and while they held said notes, that no portion of the funds belonging to said estate, would be permitted by complainants to go into said firm, or said business, or into the hands of said Benjamin F. Renick, but that the same must be paid and accounted for to the complainants as administrators of said estate.

That notwithstanding this, and without in any manner consulting complainants or either of them, said Bonney, Fay & Griggs, did in June, 1875, deliver one of said promissory notes for the sum of $39,250, due July 15, 1875, to said B. F. Renick, for the purpose of enabling said Renick to use the same for the benefit of the firm of B. F. Renick & Co., and said Renick endorsed the said note as executor of the estate of Thomas T. Renick, and delivered the same so endorsed to The First National Bank of Westboro, Mass., and pledged the same as collateral security to said First National Bank of Westboro for and on account of some claim in favor of said National Bank, and against the firm of B. F. Renick & Co., and the bill charges that said First National Bank is not a *bona fide* holder of said note, and avers that at the time of said transfer and endorsement, said bank had notice of the fact that said note did not belong to the firm of B. F. Renick & Co., and that it was then being wrongfully transferred to said bank and that said bank has no right to hold said note as against complainants, nor even as against the estate of Thomas T. Renick, deceased, and that any assertion of title thereto by the said Westboro Bank is a fraud upon complainants, and upon the estate upon which complainants are administrators. That complainants knew nothing of this transaction until shortly before the filing of the bill, and that the note is in the hands of William C. Goudy and George Chandler, who are holding it for said bank. Prays that they may be enjoined from parting with it, and that upon the final hearing, the said bank may be decreed to deliver the note to complainants, and that the injunction be made perpetual, &c.

The will of Renick Huston and letters to complainants were filed as Exhibits.

The answer of William C. Goudy and George Chandler was filed on the 9th of February, in which they state that the note was not in their possession or under their control, and the bill was on the same day dismissed as to them.

On the fourteenth of February leave was given complainants to file amendments to the bill, and these amendments are set forth on pages 13–15 of printed record. In these amendments complainants allege that after the execution of said trust deed to Fay to secure payment of said promissory notes, said land was conveyed to Henry K. Porter, William H. Ferry and James B. Goodman, as trustees of the West Chicago Land Company, an incorporated company, and that said trustees sold the south 40 acres thereof to Anthony McElroy, Edward L. Davidson, Charles B. McElroy and John J. McElroy, and that pending the negotiation for the sale of said property, complainant Palmer C. Smith, was applied to by said Harvey, and was informed that the purchasers of said south forty acres desired that the same should be subject to only one trust deed. That the notes and obligations they were to give for the property would be secured by a trust deed of the same, and that said notes, amounting to $96,000, would be deposited as collateral security for the payment of said two notes of $39,250 each, payable to Thomas T. Renick, as aforesaid, and requesting the complainants to consent to the release of said south 40 acres from the trust deed made to said Fay, and hold said notes in the place of the land so released as collateral security for the payment of said two notes, and desired complainant to extend the payment of said two notes, for two years respectively. That complainant Smith assented to the release of said forty acres upon the terms, and in the manner proposed, but stated that he could not enter into any binding contract to extend the payment of said notes as requested, but that a suit had been brought and was then pending in the State of Ohio, involving said estate of Renick Huston, and that the money represented by said notes would not be required by said estate, until said litigation was terminated, and he was satisfied that said litigation would last, at least, during the time that said parties desired said payment to be extended, and that he would not as the representative of said estate press the collection of said note until said litigation should terminate. That he embodied this agreement in writing, and signed the same as one of the administrators, and as the attorney for the estate of Renick Huston and Thomas T. Renick, and delivered to, and left with said Joel D. Harvey, said writing. That in said writing it is expressly stated that said two notes belong to the estate of Renick Huston, and a clear and distinct statement of the title of the complainants as representatives of the estate of Renick Huston to said two notes, for whose benefit the note to be given by the purchasers of the land from the West Chicago Land Company should be left in case said south 40 acres should be released as aforesaid, that the sale of the 40 acres was made, the notes amounting in the aggregate to $96,000, with trust deed to George C. Campbell to secure the same, was taken and given to J. Edwards Fay as collateral security for the two notes to Thomas T. Renick, and the 40 acres released as proposed. William H. Ferry, James B. Goodman and Henry H. Porter, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy and John J. McElroy, are made defendants, and an injunction prayed against them, enjoining them from interfering with said notes, or paying the same to any one, other than complainants, and under the order and direction of the court. The agreement referred to in the amendments is made an exhibit. The words granting the extension of the two notes of $39,250 each are:

" Now, therefore, I, P. C. Smith of the said County of
" Pickaway, and State of Ohio, one of the administrators
" *de bonis non* with the will annexed of said Renick Huston,
" and attorney for said estate, do hereby say that I will
" not press the payment of said two notes until such time
" as I shall require the said money to be paid by reason of
" the termination of said suit. The extension of the time
" of the payment of said two notes shall not in any event

" be for a term exceeding two years, upon each of said " notes from the time when each of said notes respectively " become due and payable by the written terms thereof."

The notes given by the purchasers of the land company, twenty-four in number, were, at the time of the hearing, in the hands of J. Edwards Fay. (See printed Record, p. 83.)

Chas. C. Bonney and Charles W. Griggs filed their answers March, 1876, to which complainants filed a general replication March 29. B. F. Renick, for himself and as executor, filed his answer at the April term, and on the same day the answer of the Westboro Bank was filed by Messrs. Goudy, Chandler & Skinner, its solicitors. In its answer the bank, after admitting the allegations of the bill respecting the sale of the property to Joel D. Harvey by Thomas T. Renick, and the taking of the three notes of Joel D. Harvey for $39,250 each, says " that prior to the " time when said note of Joel D. Harvey to Thomas T. " Renick, due by its terms in three years from date, became due and payable, this defendant loaned to said firm " of B. F. Renick & Co. a large sum of money, to wit, the " sum of thirty thousand dollars, evidenced by the promissory note of said B. F. Renick & Co., payable on the " 15th day of July, 1876, and dated the 21st day of June, " 1875, with interest at the rate of ten per cent. per annum after the 15th day of January, 1876, and as collateral security for the payment thereof when due, the said " note of Joel D. Harvey was legally assigned, transferred " and delivered to this defendant in good faith, and this " defendant now holds the same as a *bona fide* purchaser, " without any notice of any claims thereto by the said estate of Renick Huston, by the said complainants, or any " one; and this defendant avers that the said Benjamin F. " Renick, as executor of said Thomas T. Renick, was " the legal holder of said note, and had full power and "authority to assign and transfer the same, and that this "defendant is now the legal and equitable holder "thereof, free and clear of any claim of said complainants." On the 25th of April replications were filed to this answer, and the bill dismissed as to Benjamin F. Renick, executor. On the 27th of April complainants filed their supplemental bill with Edward J. Van Meter, administrator *de bonis non*, with the will annexed, of the estate of Thomas T. Renick, as co-complainant, alleging by way of supplement, that since the filing of the bill, to wit, on the the 10th of February, A. D. 1876, Benjamin F. Renick had voluntarily resigned his office as executor of the estate of Thomas T. Renick; that his resignation had been accepted; that said E. J. Van Meter had been duly appointed administrator, with the will annexed, of said estate, and praying that he might be permitted to prosecute said suit as co-complainant, and that the relief therein prayed for might be granted. There is filed with the bill exemplified copies of the proceeding, by which this change was accomplished, together with the copy of the will of Thomas T. Renick. The following is the clause of the will, which defendants insist authorizes the use of this note to Thomas T. Renick as collateral security for money borrowed by B. F. Renick & Co.:

"4th. Whereas, I have and hold in my name an in- "terest in the firm of Tower, Classen & Co., manufac- "turers of chromatic printing presses, which company are "manufacturing said printing presses at Canton, Ohio, "and which interest was paid for out of funds belonging "one-third to myself, one-third to my sister, Mary Gregg, "one-third to my nephews and nieces, the children of my "brother, Jonathan Renick, deceased, it is my request "that the whole interest in said company be held and re- "tained so long as my brother, Benjamin F. Renick, "may, in his discretion, think the same will be profitable,

" and I desire that the same shall be under the control and " management of the said Benjamine F.; and as to my interest in the same, I desire that it shall be held, con-" trolled, and managed by my said brother, Benjamin F., " for the benefit of himself, and my nephews and nieces, " the children of my sister, Catharine Darst, deceased, " the children of my brother, Jonathan Renick, deceased, " and Henry R. Gregg, the son of my sister, Mary Gregg, " share and share alike; and I give and bequeath all " my interest in said company to my brother, Benjamin F. " Renick, in trust, for himself, and my said nephews and " nieces above named, in equal proportions, to be held, " retained and controlled by my said brother, Benjamin " F., so long as he, in his discretion, may deem advisable; " my meaning is, that each nephew and each niece is to " take one share with my brother, Benjamin."

The cause was, on the 4th of May, upon the application of the Bank, removed into the Circuit Court of the United States for the Northern District of Illinois.

June 27th, J. Edwards Fay filed his answer, to which replication was filed July 14, 1876.

On the 11th of July, 1876, Henry H. Porter, William Henry Ferry and James B. Goodman, Trustees of the West Chicago Land Company, Joel D. Harvey and George C. Campbell, filed their answer, in which they admit the statements made in the amendments to the bill, namely, the subsequent sale of the South 40 acres, the release of the same from the trust deed to Fay, and the substituting of the 24 notes for $4,000 each in the place of such release; and they set forth the written agreement, signed by P. C. Smith as one of the administrators and attorney of the estate of Renick Huston and Thomas T. Renick, dated September 12, 1874, already referred to, and also an exact duplicate of this agreement, with the single exception that it omits all reference to the estate of Renick

Huston in connection with said note, and is signed "Benjamin F. Renick, executor of the estate of Thomas T. Renick, deceased, by J. Edwards Fay, his attorney."

It appears, (see page 80 of printed record,) that this agreement, signed Benjamin F. Renick, executor, etc., was in fact signed and left with James B. Goodman, at his office in Chicago, on the 1st of February, 1875, but dated back to September 12, and that he thereafter held both agreements, the one signed by Smith and the one signed by Renick. On the 13th of July, the appearance of defendants, Anthony McElroy, Edward L. Davidson, Charles B. McElroy and John J. McElroy, was entered, and they adopted the answer of the trustees of the West Chicago Land Company as their answer. No issue was taken upon this answer.

On the hearing, the written admission in behalf of the defendant, the First National Bank of Westboro, was read in evidence, to the effect that although Job R. Renick became seized in fee simple, absolute, of the title to said land, as appears by the records, yet by an arrangement between the parties, but which does not appear of record, he held it in trust for the benefit of the estate of Renick Huston and Thomas T. Renick.

The deposition of Palmer C. Smith, one of the complainants, was taken and read at the hearing. He testified that the agreement, signed by himself and left with Mr. Goodman, was prepared by Mr. Fay, and signed in Mr. Goodman's office, in Mr. Fay's presence. That the title to the property, for which the two notes of $39,250 each were given, was held in trust by Job R. Renick for the benefit of the estate of Renick Huston; and that Job R. Renick had no beneficial interest in it, of any kind; that the property, with other property, became encumbered with judgments and tax claims, and that Thomas T. Renick, while acting as administrator of the estate of Renick Huston, made advances of considerable sums of money to remove these encumbrances; that the property was sold at a judicial sale, and the title taken in the name of Job R. Renick, who held it in trust for the re-payment of these advances by Thomas T. Renick, and then for the estate of Renick Huston. That these advances were all repaid to Thomas T. Renick in his lifetime out of the proceeds of sales of the property, and that these two notes belonged wholly to the estate of Renick Huston.

That Mr. Fay well knew this fact, and that he had given Mr. Fay specific instructions not to allow any of the property belonging to the estate of Renick Huston to go into the firm of B. F. Renick & Co., and first heard that this note had gone to the Westboro Bank shortly prior to the commencement of this suit, and that he knew nothing of the execution of the agreement by B. F. Renick until after the commencement of the suit.

The complainants put in evidence the agreement signed by Smith, and the originals of the various exhibits attached to their pleadings, and the written statement of Mr. Fay, found on pages 83, 84 and 85, of the printed record, which was treated as evidence. In this statement Mr. Fay says :

That in the early part of the year 1875, he delivered the note in controversy to Benjamin F. Renick, as the executor of the will of Thomas T. Renick, deceased, on his demand, or request, therefor. That the note was used during the months of February, or of March, 1875, by said Benjamin F. Renick, he having endorsed and assigned it, as such executor, as collateral security, with one Saxton, for a loan to the firm of B. F. Renick & Co. That in June, 1875, the firm of B. F. Renick & Co. desired a loan of $30,000, or upwards, and, at request of B. F. Renick, he went to Lowell, Mass., with this note to obtain the money from Messrs. J. C. Ayer & Co., who had previously loaned B. F. Renick & Co. $39,250. That Messrs. J. C. Ayer & Co. finally declined to make the loan, and he learned that it might possibly be obtained from the First National Bank of Westboro, Mass., and made application to that Bank for it. That he had with him this Harvey note, but no other papers relating thereto, and this was the only paper he showed the Bank. That he told the Bank that Messrs. J. C. Ayer & Co. had, on the last of May, made a loan upon the note of Harvey first to become due as collateral, and that, in doing so, Messrs. J. C. Ayer & Co. had an examination of the security made by Hon. W. C. Goudy, one of the most eminent lawyers of Chicago, and that he approved the same. That the Bank accepted the application, and witness returned to New York, procured the necessary notes from B. F. Renick & Co., returned to Westboro, and completed the transaction. That the Bank loaned Messrs. B. F. Renick & Co. the sum of $30,000, upon their note for that amount dated June 21st, 1875, payable at the First National Bank of Chicago, Illinois, on July 15th, 1876, and the said Harvey note as collateral.

That the said Harvey note had an endorsement upon the back, showing that the payment had been extended for a period not exceeding two years from July 15th, 1875, as per contract of September 12th, 1874, in the hands of James B. Goodman, Esq. That the Harvey note was duly assigned to said Bank by B. F. Renick as executor of the will of Thos. T. Renick, deceased. That he made the application to the officers of the Bank on behalf of B. F. Renick & Co. That they examined the commercial reports of the financial standing of B. F. Renick & Co., which reports all reported the firm as having, at that time, a very excellent financial rate. That he told them that Mr. Benjamin F. Renick was the executor of Thos. T. Renick, deceased, to whom the note was payable, and that, as such, he had made the endorsement or assignment of the note. He further says :

" At the time of the making of the Ayer & Co. loan, and " the examination of the matter by Mr. Goudy, he, upon " an inspection of the Harvey note, taken by said Ayer " & Co., as collateral security for said loan, was informed " by me that said B. F. Renick intended said funds to be " used in the business of the firm of B. F. Renick & Co., " and that said B. F. Renick claimed the right to use the " said note as collateral security as proposed under the " will of Thomas T. Renick, and a copy of Thomas T. " Renick's will was thereupon produced and examined " by Mr. Goudy in connection with the transaction."

Upon this evidence, and the pleadings, (the answers filed being treated as answers to the supplemental bill), the case was heard, and a decree was entered dismissing the bill for want of equity; and from this decree complainants bring the case by appeal to this court.

The error assigned is, that the court below erred in dismissing the bill.

ARGUMENT.

It is proper for us to say that the misconduct imputed in the bill of complaint to the members of the firm of Bonney, Fay & Griggs, is properly chargeable to J. Edwards Fay. There is no evidence in the record at all implicating Messrs. Bonney & Griggs, other than the single fact of the association of their names with his in a business capacity, and they are cheerfully exonerated from all moral blame in the matter. However the case may issue, no relief will be asked against them.

The only question presented by this record is, did the Westboro Bank, by the transaction set forth in it, acquire a good title to this note for $39,250 as against the estate of Renick Huston, and the estate of Thos. T. Renick, for both estates are prosecuting this suit by their representatives, for its recovery. The money was loaned by the Bank to B. F. Renick & Co., and was used by that firm in their business.

The Bank was advised by endorsement upon the note, that payment had been extended for two years as per contract in the hands of Mr. Goodman. It was therefore affected with notice of the contents of this contract. It was therefore put upon inquiry, and must be considered as having a knowledge of all the facts which that inquiry would, if prosecuted, have disclosed. Had inquiry been made, Mr. Goodman would have shown both papers, the one executed by P. C. Smith, and the one executed by B. F. Renick. The paper signed by Smith contained an express statement that the note was the property of the estate of Renick Huston. The circumstance that the officers of the Bank trusted Mr. Fay without making this inquiry, and that he fraudulently concealed from them this fact, cannot prejudice the complainants, for he was not acting as their agent. It can only injure the parties who trusted him.

We will first view the case in behalf of the estate of Thomas T. Renick, whose representative is prosecuting this suit as one of the complainants. The note is payable to Thomas T. Renick. This was a distinct statement to the Bank, that the note belonged to his estate, that it was a part of the assets of that estate. More than this. In the agreement for the extension of the payment of the note signed by Benjamin F. Renick, as executor of the last will of Thomas T. Renick, and which was placed in the hands of Mr. Goudy at the time, and upon whose examination the bank to some extent relied, Renick says he " will not press the payment of the said two notes until "such time as *I shall require the said money to be paid to* "*me to make settlement of said estate.*"

Here is a distinct statement that these notes belonged to that estate, and that he would be required to account for it when paid, as executor of the estate.

The defendants, therefore, knew that the use of this note for the benefit of B. F. Renick & Co., and as collateral security for the money they were about to loan that firm, was a misapplication of it.

In the case of *Lowry* v. *Commercial Bank of Baltimore and others*, reported in 6 Western Law Journal, Talbot Jones died the owner of 282 shares of stock in the Commercial and Farmers' Bank of Baltimore. By his last will he directed his executors to pay the dividends upon this stock to his sister, Maria Lowry, during her life ; and the stock, with the residue of his estate, he bequeathed to Samuel Jones and Andrew D. Jones, his executors in trust, for parties named. He died in 1834. Samuel Jones, one of the executors, had the stock transferred to the Merchants' Bank, by surrendering the certificates as executor, and having new certificates issued to the Merchants' Bank. On these new certificates he borrowed from that bank money on his own account. When his note was paid the stock was surrendered to him by the bank and returned to the estate. Afterwards the stock was again transferred to the bank, and upon it the firm with which he was connected borrowed various sums of money, and it was finally sold to pay one of the notes for which it was pledged. Held by the Court, that the Commercial and Farmers' Bank was liable to the complainant, Maria Lowry, for the dividends upon the stock. Court say : "Undoubtedly the mere act of permitting this stock to be "transferred by one of the executors furnishes no ground "for complaint against the bank, although it turns out that "this executor was, by the act of transfer, converting the

" property to his own use ; for an executor may sell and " raise money on the property of the deceased in the regu- " lar execution of his duty, and the party dealing with him " is not bound to enquire into his object, nor liable to the " misapplication of the money. But it is equally clear that if " a party dealing with an executor has at the time reasona- " ble ground for believing that he intended to misapply the " money, or is in the very transaction applying it to his own " private uses, the party so dealing is responsible to the per- " sons injured." This case was decided in the United States Circuit Court of Maryland, by TANEY, Justice.

The case of *McLeod* v. *Drummond*, 17 Vesey, 152, holds that " a pledge of the assets of an executor cannot be held " against a pecuniary or residuary legatee, and though for " money advanced at the time of and under circumstances " showing an intended application not conformable to or " connected with the character of executor."

See also Story's Eq. Juris., §§ 422, 423 and 424.

A person receiving in exchange for property sold to an administrator, for his own use, promissory notes belonging to an estate, with notice from the character of the transaction that the transfer of the notes was a breach of the administrator's duty, cannot hold the notes or profit by their purchase, as against those rightfully entitled to them.

Thomasson v. *Brown*, 43 Ind., 203.

As the legal owners of the credits and choses in action of their testators, executors may transfer negotiable paper, which is part of the personal estate. If a transfer of such property is made in a transaction in nowise connected with the estate, but for the personal gain and advantage of the executor, the chose in action does not lose its character as assets, and the assignee will acquire no title. When negotiable paper is payable to an executor as such, it is notice to those who take it that it is assets of the estate and not the individual property of the executor.

Booyer v. *Hodges*, 45 Miss., 78.

Where one takes a note of the estate from an administrator *mala fide*, as for instance in the payment of the administrator's own debt, he cannot hold the fund from the next of kin or those who are entitled to be substituted in their place, unless the administrator was in advance to the estate.

Latham v. *Moore*, 6 Jones, (Eq.) N. C., 167.
Burbank v. *Payne*, 17 La., 15.

An administrator has no authority, and the court of Probate can give him no authority to advance money to a firm of which his intestate was a member in order to protect the interests of the estate in such firm, and he would be liable for any loss resulting from thus advancing the money.

Tompkins v. *Weeks*, 26 Cal., 50.

A party having purchased a bond and mortgage knowing that they belonged to the estate of a testator, and that the executor from whom he purchased intended to appropriate the proceeds to his own use, will be adjudged as conniving with the executor to work a *devastavit*, and held responsible to the persons injured by the purchase for the amount due on the bond and mortgage at the time of the transaction, with interest.

Sacia v. *Berthoud*, 17 Barb. (N. Y.), 15.
Miller v. *Williamson*, 5 Ind., 219.
Williamson v. *Morton*, 2 Md. Ch., 94.
Wilson v. *Doster*, 7 Ired., 231.

If the purchaser has notice that the transaction amounts to a *devastavit* he is liable to legatees and distributees, and the property may be pursued. A transfer by way of security or in extinguishment of the private debt of the executor is sufficient notice.

Petrie v. *Clark*, 11 S. and R., 388.
Field v. *Schiefelin*, 7 John. Ch., 155.
Williamson v. *Branch Bank*, 7 Ala., 906.
Williamson v. *Morton*, 2 Md. Ch., 94.
Dodson v. *Simpson*, 2 Rand, 294.
Colt v. *Lasnier*, 9 Cow., 320.
Parker v. *Gilliam*, 10 Yerg., 394.
Garnet v. *Macon*, 6 Call., 361.
Graff v. *Castleman*, 6 Rand, 204.

At law actual collusion is necessary, but equity regards the whole transaction.

Williamson v. *Morton*, 2 Md. Ch., 94.

An appropriation by an administrator of the assets of his intestate to his own private use is *prima facie*, a breach of trust, and a fraud upon the right of those interested in the estate, and he who knowing the purpose of the administrator so to appropriate them, purchases them from him, or advances him money upon their pledge whereby the fraud is actually consummated, takes them *mala fide*.

Rhame v. *Lewis*, 13 Rich. (S. C.) Eq., 270.

Authorities of this character might be extended indefinitely.

II.

By the act of March 17, 1869, Vol. 3, p. 1757, Sayler's statutes of Ohio, it is provided that the Probate Court, "may upon good and sufficient proof that it would be for "the advantage of the estate of the decedent to sell any "part of the personal estate at private sale, said court may "authorize such executor or administrator to thus sell per-"sonal estate, or any part or parcel thereof at private "sale, etc."

Taney, Justice, in the course of his opinion in the case of *Lowry* v. *Commercial Bank of Baltimore*, refers to a statute of the State of Maryland, which gives to an executor power to procure an order of sale from the Orphan's Court when a sale is necessary, and says:

" It may we think be safely asserted that in practice " under this law, there has been no instance in Maryland " since its passage in which an executor acting fairly and " *bona fide* has undertaken to sell or pledge property specifically bequeathed without a previous rule from the " Orphan's Court. * * * In South Carolina under a law " very similar in its provisions, it has been decided that the " sale of such property by an executor is void unless made " by the authority of the court (4 Des., 522), and we think " there are strong reasons to support that decision."

In the case of *Rhame* v. *Lewis*, 13 Rich., (S. C.), 270, it is held that no valid disposition of an intestate's personal chattles, or visible effects can be made by an administrator without a previous rule of the court of equity or ordinary. In the case of *Saxon* v. *Barksdale*, 4 Dess., 521, in speaking of a similar statute of that State, the court say: " This law manifestly intended to take away that absolute " power of the executor or administrator over the property " of the deceased which he before held, and obliges him to " consult, and be guided by a court of justice to warrant " him in selling any part of the personal property, even " perishable articles."

In *Burbank* v. *Payne*, 17 La., 15, held that an administrator cannot transfer negotiable assets without an order of court.

III.

The title of the administrator *de bonis non* dates from the death of the decedent, and he may recover not only upon causes of action in favor of the deceased in his lifetime, but equally for any such cause of action accruing after the decease, in regard to assets, and he will not be estopped by any illegal act of the former representatives of the estate.

3 Redfield on Wills, 102 and note.

IV.

The defendant, the bank, in its answer says: "That "the said Benjamin F. Renick, as the executor of the said "Thomas T. Renick, was the legal holder of said note, "and had full power and authority to assign and transfer "the same, &c."

As the attorneys, Messrs. Goudy, Chandler & Skinner, who drew this answer, based the opinion they gave to Messrs. J. C. Ayer & Co. upon their construction of the will of Thomas T. Renick, it is fair to assume that these defendants have rested their case wholly upon the question whether an authority to use this note in the way it was used, can be found in that will.

The note purported to belong to the general assets of Thomas T. Renick. At the time of his death, Thomas T. Renick was a member of the firm of Tower, Classen & Co., manufacturers of chromatic printing presses, at Canton, Ohio, and of course his death terminated that relation.

Whatever is said in the will about continuing his interest in that firm, is said with reference to the firm as it was then constituted. There was a change in this firm after his death. There was a change in the membership and in the name of the firm, which of course involved a change of interests, and destroyed its identity. There is no evidence that the new firm of B. F. Renick & Co. contains a single member, with the exception of Classen, of the old firm of Tower, Classen & Co., and the will says nothing about the successor of Tower, Classen & Co. An authority to continue an interest in the firm of Tower, Classen & Co. cannot be treated as an authority to transfer that interest to and continue it in a new firm.

2. But this litigation does not involve the question whether this interest was rightfully or wrongfully transferred to this new firm, but whether the general assets of the estate of Thomas T. Renick could be used by its executor and a party personally interested to pay the debts of this new firm.

Story, in his work on Partnership, § 201 *a*, says :

" Nothing but the most clear and unambiguous language, " demonstrating in the most positive manner that the " testator intends to make his general assets liable for all " debts contracted in the continued trade after his death, " and not merely to limit it to the funds embarked in that " trade, would justify the court in arriving at such a con- " clusion."

Citing *ex parte* Garland, 10 Vesey, 110, 121, 122, and *Pitkin* v. *Pitkin*, 7 Conn., 307.

This doctrine was distinctly affirmed in the case of *Burwell* v. *Mandeville's Exr.*, 2 How., 560, 576.

In the last case the opinion of the court was given by Justice Story, and the language of the text already quoted, repeated, and many authorities were cited in support of it. In that case, the language in the will was : " It is my will that my interests in the copartnership sub- " sisting between Daniel Cawood and myself, under the " firm of Daniel Cawood & Company, shall be continued " therein until the expiration of the term limited by the " articles between us, the business to be continued by the " said Daniel Cawood, and the profit or loss to be dis- " tributed in the manner the said articles provide."

Cawood, after the testator's death, carried on the copartnership in the name of the firm, and failed in business before the regular expiration thereof, according to the articles, and the object of this litigation was to hold the general assets of the estate of Joseph Mandeville liable for the debts of the co-partnership contracted after his decease; and this court says, at page 576: "By the general "rule of law, every partnership is dissolved by the death "of one of the partners. (*Scholfield* v. *Eichelberger*, 7 Pet., "586.) It is true that it is competent for the partners to pro-"vide, by agreement, for the continuance of the partnership "after such death; but then it takes place in virtue of such "agreement only, as the act of the parties, and not by "mere operation of law. A partner, too, may, by his will, "provide that the partnership shall continue, notwithstand-"ing his death; and if it is consented to by the surviving "partner, it becomes obligatory, just as it would if the "testator, being a sole trader, had provided for the con-"tinuance of his trade by his executor, after his death. But, "then, in each case the agreement or authority must be "clearly made out; and third persons, having notice of the "death are bound to inquire how far the agreement or au-"thority to continue it extends, and what funds it binds; and "if they trust the surviving party beyond the reach of such "agreement, or authority, or fund, it is their own fault, and "they have no right to complain that the law does not "afford them any satisfactory redress.

"A testator, too, directing the continuance of a partner-"ship, may, if he so choose, bind his general assets for all the "debts of the partnership contracted after his death. But "he may also limit his responsibility, either to the funds "already embarked in the trade, or to any specific amount "to be invested therein for that purpose; and then the "creditors can resort to that fund or amount only, and not "to the general assets of the testator's estate, although

" the partner, or executor, or other persons carrying on " the trade may be personally responsible for all the debts " contracted. * * * * * * * *

" And this leads us to remark, that nothing but the most " clear and unambiguous language, demonstrating in the " most positive manner that the testator intends to make " his general assets liable for all debts contracted in the " continued trade after his death, and not merely to limit " it to the funds embarked in that trade, would justify the " court in arriving at such a conclusion from the manifest " inconvenience thereof, and the utter impossibility of pay- " ing off the legacies bequeathed by the testator's will, or " distributing the residue of his estate without, in effect, " saying at the same time, that the payments may all be " recalled if the trade should become unsuccessful or " ruinous."

And the court affirmed the decree of the court below, dismissing the bill.

The case of *Lutch, Adm'r*, v. *Behrens*, 28 Ohio State Reports, 231, is a very good case on this point.

If the general assets of the estate of Thomas T. Renick were not bound for the debts of B. F. Renick & Co., then applying them to that purpose was a misappropriation of them. Whether they were thus bound depends upon the testator's intention as expressed in his will, and this intention must be expressed in "the most clear and unambiguous language, demonstrating in the most positive " manner that he intended to make his general assets thus " liable." No such intention can be found in this will of Thomas T. Renick. On the contrary, it is manifest that he intended to limit the liability of his estate to that portion of his assets that was at the time of his death embarked in the co-partnership of Tower, Classen & Co., of which firm he was then a member, and he simply provided that it should be continued in the firm so long as his brother Benjamin F. Renick should regard it as a profitable investment. The language of the will, on page 89 of the record, is:

" Whereas, I have and hold in my name an interest in " the firm of Tower, Classen & Co., manufacturers of " chromatic printing presses, which company are manu- " facturing said printing presses at Canton, Ohio, and " which interest was paid for out of funds belonging to " myself, one-third to my sister, Mary Gregg, and one- " third to my nephews and nieces, the children of my " brother, Jonathan Renick, deceased.

" It is my request that the whole interest in said com- " pany be held and retained so long as my brother, Ben- " jamin F. Renick, may, in his discretion, think the same " will be profitable; and I desire that the same shall be " under the control and management of the said Benja- " min F.; and as to my interest in the same, I desire that ' it shall be held, controlled and managed by my said " brother, Benjamin F., for the benefit of himself, and " nephews and nieces, the children of my sister, Cather- " ine Darst, deceased, the children of my brother, Jona- " than Renick, deceased, and Harry R. Gregg, the son of " my sister, Mary Gregg, share and share alike; and I " give and bequeath all my interest in said company to " my said brother, Benjamin F. Renick, in trust, for him- " self, and my said nephews and nieces, above named, in " equal proportions, to be held, retained and controlled by " my said brother, Benjamin F., so long as he, in his dis- " cretion, may deem advisable. My meaning is, that each " nephew and each niece is to take one share with my " brother, Benjamin."

To give his brother complete control of this interest, so that he could exercise the discretion with which he was vested fully, and without being at all trammeled by his official duties as executor, he devised this interest to him in trust for those who were the equitable owners of it, stating that this interest was purchased and paid for, one-third by himself, one-third by his sister, Mary Gregg, and one-third out of funds belonging to the children of his brother, Jonathan Renick.

He thus separated this interest from the rest of his estate, and placed it in the hands of B. F. Renick, not as executor, but as trustee, and all the duties in respect to this interest that were devolved upon B. F. Renick, were devolved upon him as trustee, and he could have performed them without taking out letters.

In *Dunning*, *Trustee*, v. *Ocean Nat. Bank*, 61 N. Y., 497, D died seized of real estate covered by a mortgage, and leaving a will by which he devised the real estate to his executor upon certain specified trusts. The executor named renounced and refused to accept the trust. The defendant, the owner of the mortgage, foreclosed the same, and upon a sale bid in the lands at a price which left a surplus. This defendant retained. Plaintiff was subsequently administrator, with the will annexed, and was thereafter duly appointed trustee to carry out the trust imposed as executor. Held that she could not recover the surplus as executrix, but only as trustee, and that the cause of action did not arise until she was appointed as such trustee. The Court say, at page 501: "In the case at bar it is, I think, very obvious that the "testatrix intended to make her executor a trustee, with "large discretionary power, which he might exercise "without any reference to his duty as executor. This "trust duty was not annexed to the office of executor, but "was devised to him as a power. He might, therefore, "accept and execute the trust without proving the will, "or taking out letters testamentary. He became trustee,

" and was vested with the trust estate by virtue of the " will alone." (And cases cited.)

There is not the slightest ground for saying that there is anything in the will to justify B. F. Renick in using property he held as executor for the benefit of property he held as trustee. Nothing could have more clearly indicated the purpose of the testator to keep these two species of property separate and distinct, than his placing them thus in the hands of the same person under different titles.

MILLER & FROST,

For Appellants.

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1878.

PALMER C. SMITH AND JOB R. RENICK, ADMR'S, ETC., ET AL.,

versus

FIRST NATIONAL BANK, OF WESTBORO, ET AL.

SAME, *vs.* J. C. AYER & CO., ET AL.

APPEAL

From the Circuit Court of the United States for the Northern District of Illinois.

Union-Herald Job Printing House, Circleville, Ohio.

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1878.

PALMER C. SMITH AND JOB R. RENICK, ADMR'S, ETC., ET AL.,

versus

FIRST NATIONAL BANK, OF WESTBORO, ET AL.

SAME, *vs.* J. C. AYER & CO., ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Renick Huston, of Pickaway county, Ohio, departed this life the owner of some lands, near Chicago, Illinois, and leaving a will appointing Thomas T. Renick, also of said Pickaway county, his Executor, and authorized said Executor to dispose of said lands. Said Executor qualified before the Probate Court, of Pickaway county, Ohio, and entered upon the discharge of the duties of said trust, and in the discharge of the duties of said trust, he sold some of those lands and took notes in his own name for the deferred payments. In 1873 Thomas T. Renick departed this life testate, appointing Benjamin F. Renick his Executor, who was qualified as such Executor by the Probate Court, of Pickaway county, Ohio, and the said Benjamin entered upon the discharge of the duties of said Executor.

At the time of the death of said Thomas T. Renick he was a member of the firm of Tower, Claassen & Co., a firm composed of Peter G. Tower, Peter J. Claassen and Thomas T. Renick, and who were engaged in the manufacture of Chromatic Printing Presses, at Canton, Ohio.

Benjamin F. Renick, in March, 1874, and after the death of said Thomas T. Renick, became a member of the firm of B. F. Renick & Co., which firm was not formed until the month of March, 1874, and until after Peter G. Tower, the head of the firm of Tower, Claassen & Co., had sold out his interest in the firm to said Benjamin F. Renick and retired from the firm, and the said firm of Tower, Claassen & Co. had ceased to exist.

The defendants, J. C. Ayer & Co., and the Westboro Bank, in both these cases, made loans to the firm of B. F. Renick & Co., and received the notes in controversy, belonging to the estate of Renick Huston, as collateral security for said loans.

The Executor of Thomas T. Renick, in indorsing the notes in controversy in these cases to the firm of B. F. Renick & Co., committed a gross breach of trust—amounting to a fraud—against the estate of Renick Huston, as well as against the estate of Thomas T. Renick.

The attorney of the defendant knew that this note was being used by this Executor for his individual use, and not for the purpose of the estate.

The attorney of the defendant knew that the Executor was about to commit a fraud on these estates.

The knowledge of the attorney is the knowledge of the principal.

The Distilled Spirits, 11th Wall, 356.

The rule is stated in the fifth paragraph of the syllabus of the case, as follows: "The rule that notice to the agent is notice to the principal, applies not only to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him in a prior transaction, and present to his mind at the time he is acting as such agent, provided it be of such a character as he may communicate to his principal without breach of professional confidence."

In Abell vs. Howe, 11th A. M. Law Reg., 148, the Court held that: "If the attorney had notice of the trust the law will presume the notice was communicated to the client."

See Hart vs. F. & M. Bank, 33d Vt., 252.

"When a person takes a negotiable security, which, upon the face of it is dishonored, he cannot," says Taney, C. J., "be allowed to claim the privilege which belongs to a bona fide holder."

Andrews vs. Pond, 13th Pet., 65.

"If he chose to receive it, under such circumstances, he takes it with all the infirmities belonging to it, and is in no better condition than the person from whom he received it. The same doctrine was enforced and applied in a subsequent case, when in speaking of a promissory note so marked as to show for whose benefit it was discounted. The Court held that all those dealing in paper with such marks on its face must be presumed to have knowledge of what it imported."

Fowler vs. Brantley, 14th Pet., 320.

The note in the case of Fowler vs. Brantley had been purchased for value before due, and is convincing authority that the defendants in this case have no title to the paper in controversy.

"Actual notice in such a case is not required, even in suits founded upon negotiable security, when the evidence of its infirmity consists of matters apparent upon its face. * * * * Constructive notice in such case is held sufficient upon the ground that when a party is about to perform an act which he has reason to believe may affect the rights of third persons, an inquiry as to the fact is a moral duty, and diligence an act of justice."

Angle vs. N. W. Mutual Life Ins. Co., 92d U. S. Rep., 342.

Whatever fairly puts a party upon inquiry in such a case is sufficient notice in equity, when the means of knowledge are at hand, and if the party, under such circumstances, omits to inquire, and proceeds to do the act, he does so at his peril, as he is then chargeable with all the facts, which, by a proper inquiry, he might have ascertained. Ib. ib., and the cases there cited.

If, therefore, a purchaser knows, or has notice, that a sale by an Executor is fraudulent, or collusive, or is a devastavit, or is *for the purpose of a misapplication of the assets*, his title will not be allowed to prevail against the beneficial interest of creditors, legatees, or heirs.

Dickenson vs. Lockyer, 4th Vesey, 36, and N.

II.

In the case of Field vs. Schaffelin, 7th, J. Ch. 150, where a guardian had sold a bond and mortgage, taken in the name of the guardian, but which belonged to his ward, the Chancellor, on page 153, says: "If there was any fraud or collusion, or if the plaintiff knew, or was sufficiently informed, when he accepted the bond and mortgage, that the guardian had in *contemplation a breach of trust, and intended to misapply the moneys, then I apprehend that the plaintiff must be deemed to have taken the bond and mortgage in trust for the infant.*"

Hill vs Sampson, 7th Vesey, 152.
Story's Eq. Jr., Secs. 422, 423, 1257.

The loans made by the Westboro Bank, and by J. C. Ayer & Co., were both made to the firm of B. F. Renick & Co., and for the use of that firm.

The Bank, and J. C. Ayer & Co. both looked to that firm for the repayment of the money loaned—the notes in controversy were transferred as collateral security for these loans.

The Bank and Ayer & Co. both knew that this money was borrowed by B. F. Renick & Co. for their individual use.

In the case of Lowrie vs. C. & M. Bank of Maryland, Taney's C. C., Decs. 310, it was held by Taney, C. J., "That if a party dealing with an executor has, at the time, reasonable ground for believing that he intends to misapply the money, or is in the very transaction applying it to his own use, the party so dealing is responsible to the person injured."

In the case of Shaw vs. Spencer, 100th Mass., 389, the Court say, that when a certificate of stock expressed in the name of "A. B., Trustee," is by the "trustee pledged to secure his own debt, the pledge is, by the terms of the certificate, put on inquiry as to the character and limitations of the trust, and if he accepts the pledge without inquiry he does it so at his peril."

Duncan vs. Jandon, 15th Wall, 165.

III.

In Ohio, the statute provides for the manner of disposing of the personal property of a deceased, including both notes and claims.

The statutes, 1st S. & C., 579, Sec. 72, is as follows: "The sale of personal property shall be made at public vendue, after at least fifteen days notice having been given in some newspaper in general circulation throughout the county, or by advertisement set up in at least five public places in the county where such sale is to take place." Sec. 252, ib., 614 provides for the sale of claims, debts and demands, belonging to the estate, and Sec 253, ib., 615, provides for the giving notice of the intended application to the Court for an order to sell such claims and demands, and Sec. 254, ib., ib., is as follows:

"That if the Court shall order a sale of debts or demands, the executor or administrator shall give public notice, as aforesaid, of the time and place of sale, three consecutive weeks previous to the day of sale, at which they shall be sold *to the highest* bidder, and the avails of such sale shall be accounted for by said executor or administrator as other money belonging to such estate."

Thus it will be perceived, that in all cases, including the sale of claims and notes, notice shall be given of the sale, and they shall be sold at public auction to the highest bidder, and in all States where the statute directs the manner of the disposition of the personal property, "purchasers must see to it that executors and administrators, in making sales, pursue the course marked out for them by the statutes, or by the orders of the Court, or they will take no title."

Perry on Trusts, Sec. 225, and cases there referred to.

In all sales by executors and administrators *good faith* in indispensable.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1878.

NO. 222.

PALMER C. SMITH, and JOB R. RENICK, Administrators, etc., of RENICK HUSTON, deceased, and EDWARD J. VAN METER, Administrator, etc., of THOMAS T. RENICK, deceased, *Appellants,* *vs.* THE FIRST NATIONAL BANK OF WESTBORO', Mass., JOEL D. HARVEY, BENJAMIN F. RENICK, and others, *Appellees*	*Appeal in Equity from the Northern District of Illinois.*

ABSTRACT AND BRIEF FOR APPELLEES.

By C. C. BONNEY,

Counsel for the First National Bank of Westboro'.

CHICAGO:
THE CHICAGO LEGAL NEWS COMPANY, 47 & 49 DEARBORN ST.
1878.

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POINTS MADE.

1. Appellant's pleadings and proofs are fatally defective.
2. The complainants are Ohio administrators, but the subject matter of the suit is Illinois assets.
3. The legal title to the note sued for, was duly transferred to the bank for value.
4. The right of the payee's executor to transfer the note is unquestionable.
5. The power granted by the will, is ample to warrant the executor in investing funds of the estate in the Canton business.
6. This power illustrated by several cases.
7. The supposed trust alleged by complainants was a mere expectation; or at best the facts could warrant nothing more than a claim against the estate of the payee.
8. The knowledge and concurrence of the complainants; and the laches of all parties in interest, is an equitable bar to the present claim.
9. The note was not due when it was transferred to the bank.
10. The transfer of the note to the bank cannot be impeached, unless for actual fraud.
11. There is no difference in principle between a sale, and a pledge for money advanced.
12. The decisions of this Court in *Goodman* v. *Simonds*, and *Murray* v. *Lardner*, are decisive of this case.
13. Even the executor, his good faith not being impeached, is not liable for the alleged loss, much less the bank which paid value for the note.

THE PRINCIPAL DATES IN THE CASE.

1. 1864—Feb. —. Renick Huston died in Ohio, leaving a will, and appointing Thos. T. Renick his executor.
2. 1871—July 12. The Illinois lands securing the note sued for, were sold and conveyed to Job R. Renick, under certain judicial sales.
3. 1872—July 15. Said lands were sold to Harvey, the maker of the note, by Thos. T. Renick, and were conveyed to him by deed of both Thomas T. and Job R. Renick.
4. 1873—Aug. —. Thomas T. Renick died in Ohio, leaving a will, and appointing B. F. Renick his executor.
5. 1873—Sept. 2. Complainants were appointed administrators, etc., of Renick Huston, in Ohio.
6. 1874—Sept. 12. There was an extension of time for the payment of the note, for not more than two years.
7. 1875—June 21. There was an actual loan of $30,000, by The First National Bank of Westboro, on a note of executors firm, with the Harvey note as collateral security.
8. 1875—July 15. This was the original date for the maturity of the note. It was payable to Thomas T. Renick, as in his own right.
9. 1876—Feb. 3. Complainants filed their bill in equity.
10. 1876—Feb. 10. B. F. Renick, having qualified and acted as executor of Thomas T. Renick to that time, resigned his office, and the supplemental complainant, Van Meter, was appointed in his stead.

SUPREME COURT OF THE UNITED STATES.

No. 222. October Term, A. D. 1878.

PALMER C. SMITH, and JOB R. RENICK, Administrators, etc. of RENICK HUSTON, deceased; and EDWARD J. VAN METER, Adminis'tor, etc., of THOMAS T. RENICK, deceased,
Appellants,
vs.
THE FIRST NATIONAL BANK OF WESTBORO', Mass., JOEL D. HARVEY, BENJAMIN F. RENICK, and others,
Appellees.

Appeal in Equity from the Northern District of Illinois.

ABSTRACT AND BRIEF FOR APPELLEES,

By C. C. BONNEY,

Counsel for the First National Bank of Westboro'.

MAY IT PLEASE THE COURT:

The bill in this case was filed to obtain a decree that a promissory note made by Joel D. Harvey to Thomas T. Renick, for thirty-nine thousand two hundred and fifty dollars, is the property of complainants; and to compel a surrender of the note to them. That note was then in the possession of the First National Bank of Westboro', which is the principal party defendant, the other persons named as defendants having been made parties on the ground of some incidental interest or relation. The substantial question in the case, is whether the complainants have established title to the note in question. The court below held that they had failed to do so, and dismissed the bill of complaint for want of equity. The validity of that decree is questioned by this appeal.

I.

THE PLEADINGS.

The case was originally commenced in the Superior Court of Cook County, and transferred, on petition of the Bank, to the Circuit Court of the United States, at Chicago.

THE BILL OF COMPLAINT, Amended Bill, and Supplemental Bill set forth in substance, that the appellants, Smith and Renick, sue as the legal representatives of Renick Huston, deceased; and that the complainant, Van Meter, sues as the legal representative of Thomas T. Renick, deceased. Huston died in February, 1864; and Thomas T. Renick, in August, 1873. The former left a will appointing Thos. T. Renick his executor; and the latter left a will, in which he appointed as his executor, Benjamin F. Renick, who qualified and entered upon the discharge of his duties. In February, 1876, he resigned, and the complainant, Van Meter, was appointed in his stead.

Also, that certain lands described in the bill of complaint, were the property of Renick Huston at the time of his death; and that said lands were sold at a judicial sale, and the legal title vested in Job R. Renick, one of the complainants, but that he held said title in trust for the estate of Renick Huston.

Also, that on or about July 15, 1872, Thomas T. Renick, as executor of Renick Huston, sold the lands described in the bill, to Joel D. Harvey for $157,000, of which $39,250 was paid, and the balance secured on the premises, and made payable according to the tenor of three promissory notes, the last of which, for $39,250, is the note now in controversy. That said sale was consummated by a deed from Job R. Renick, the complainant, to said Harvey, the purchaser.

The bill charges that Thomas T. Renick, and his counsel, and executor, and the Bank, all knew that the promissory notes taken for the land were the sole property of the estate of Renick Huston.

The bill also alleges that said Benjamin F. Renick, while he was the executor of Thomas T. Renick, was at the same time a member of a printing-press firm at Canton, Ohio, doing business under the firm name of B. F. Renick & Co., and that said Benjamin pledged the note in question to the First National Bank of Westboro', as collateral security for the benefit of said firm.

That at the time of the pledge, the firm of B.F.Renick & Co., and all members of the same were, and still are, utterly insolvent; and that this fact was well known to the Bank when it received the note; and that the Bank had notice of the fact that the note did not belong to the firm of Renick & Co.; and that the bank is not a *bona fide* holder of the note, but received the same wrongfully, and has no title even as against the legal representatives of Thomas T. Renick; but the assertion of such title is a fraud on complainants, and the estates they represent.

It was also alleged, among other things, that Harvey had conveyed the land to the Trustees of the West Chicago Land Company; and that said trustees had conveyed a portion of the same to certain purchasers who are named in the pleadings; and that there had been a release of a portion of the lands from the mortgage, by which the note now in controversy was secured, and a substitution of notes given by said purchasers to secure the original note in place of the land released; and that, September 12, 1874, an arrangement was made for an extension of the original notes for a time not exceeding two years. Said trustees and purchasers, with a number of attorneys, were made parties to the bill, but there seems to be no occasion for referring to them or their relations to the matter, in the consideration of this appeal. If the appellants have not shown a paramount title to the note in question, as against the First National Bank of Westboro', the decree of the court below will be affirmed.

It is also stated that the complainant Smith consented to the arrangement for an extension of the original note; and a copy of a paper signed by him is annexed to the amended bill. That extension was made for the benefit of the West Chicago Land Company. In that paper, complainant Smith asserts that the note in question is the property of the estate of Renick Huston; but the Bank is not a party to the paper, nor otherwise in a position to be prejudiced by its recitals.

A copy of the will of Renick Huston is annexed to the Bill of Complaint. In it he appoints Thomas T. Renick his executor, and authorizes him to sell any of his real estate at public or private sale, and to execute deeds to the purchasers. The bill does not aver that he exercised that power. Printed Case, pp. 2, 13, 19.

THE WILL OF THOMAS T. RENICK is also exhibited. The first, fourth, eighth, and eleventh provisions of this will are as follows:

First. I direct that all my just debts be paid.

Fourth. Whereas, I have, and held in my name, an interest in the firm of Tower, Claassen & Co.,* manufacturers of chromatic printing presses, which company are manufacturing said printing presses at Canton, Ohio, and which interest was paid for out of funds belonging, one-third to myself; one-third to my sister, Mary Gregg; and one-third to my nephews and nieces, the children of my brother, Jonathan Renick, deceased; it is my request

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*The firm of Tower, Claassen & Co. was, after the death of Thomas T. Renick, changed to B. F. Renick & Co., on the admission of B. F. R., who purchased the interest of Tower.

that the whole interest in said company be held and retained so long as my brother, Benjamin F. Renick, may, in his discretion, think the same will be profitable; and I desire that the same shall be under the control and management of the said Benjamin F.; and as to my interest in the same, I desire that it shall be held, controlled, and managed by my said brother, Benjamin F., for the benefit of himself, and my nephews and nieces, the children of my sister, Catharine Darst, dec'd, the children of my brother Jonathan Renick, dec'd, and Harry R. Gregg, the son of my sister, Mary Gregg,—share and share alike; *and I give and bequeath all my interest in said company to my said brother, Benjamin F. Renick, in trust for himself and my said nephews and nieces above named, in equal proportions, to be held, retained, and controlled by my said brother, Benjamin F., so long as he, in his discretion, may deem advisable.* My meaning is that each nephew and each niece is to take one share with my brother, Benjamin.

Eighth. As to the partnership existing between mysel- and my brother Job, we having kept no accounts of the said partnership as between ourselves, I will and direct that my executor, hereinafter named, in making a settlement of said partnership matters, take the statement of my said brother Job, and any statement of said partnership accounts that my said brother Job may make, I will and direct that the same shall be forever binding on my executor, heirs and legatees, and all of them.

Ninth. All the rest and residue of my property, of every kind and description, I give and bequeath to my nephews and nieces, the children of my sister, Catharine Darst, deceased, the children of my deceased brother, Jonathan Renick, and Harry R. Gregg, son of my sister, Mary Gregg—share and share alike—giving to each nephew and niece one share.

Eleventh. I hereby nominate and appoint my brother, Benjamin F. Renick, executor of this, my last will and testament, and, having every confidence in his integrity, I direct that no bond be required of him as such executor. Printed Case, p. 34.

THE ANSWER OF THE BANK, printed case, p. 25, admits the sale of the lands by Job R. Renick, and Thomas T. Renick to Joel D. Harvey; and the making of the note in controversy for $39,250, payable by said Harvey to said Thomas T. Renick, and secured on the premises.

It avers that in the transaction, Thomas T. Renick acted solely upon his own individual account, and in his own interest; and that, although the legal title to said real estate was vested in the said Job R. Renick, he was a mere naked trustee thereof, for the use and benefit of said Thomas, who was the equitable owner of the same; and it also denies that the notes taken for the purchase money were ever the property of the estate of said Renick Huston, but alleges that they were the property of said Thomas T. Renick.

This answer also sets up a loan by the Bank of $30,000 to the firm of B. F. Renick & Co., upon their note for the amount, dated June 21st, 1875, and payable July 15th, 1876, and the note of Joel D. Harvey, in controversy, as collateral security; and that the Bank made the the loan, and received the collateral, without notice of any claim thereto, by or on behalf of the complainants, or either of them, or the estates represented by them.

The answer of the Bank, also avers that the said Benjamin F. Renick, by whom, as the executor of said Thomas T. Renick, said note of Joel D. Harvey was transferred to it, was the legal holder of the note, and had full power and authority to assign and transfer the same, and that the Bank is now the legal and equitable holder thereof, free and clear from any claim of the complainants.

Having no knowledge or information, except from the Bill of Complaint, of the other matters and things set up therein, the Bank neither admits nor denies the same, but insists on proof thereof.

THE ANSWER OF BENJAMIN F. RENICK, Printed Case, p. 57, denies that said Thomas T. Renick was ever the executor of Renick Huston, in the State of Illinois, but avers that he was a non-resident of said State, and disqualified from acting in any such capacity, and admits that he was such executor in the State of Ohio; and that he died in August, 1873, leaving a will of which the respondent was duly appointed the executor.

He denies that Renick Huston ever had any title of record to the premises described in the Bill of Complaint.

Respondent also sets up that the premises described in the Bill, were sold in certain judicial proceedings in the Probate Court of Cook County, and in the United States Circuit Court for the northern district of Illinois, and were thereupon conveyed to said Job R. Renick. That said sales were fair, open, public, and free to competition, and whatever interest the estate of Renick Huston had in the property was wholly extinguished thereby. That said sales were made for the benefit of Thomas T. Renick, who paid for the lands, and purchased out-standing tax-titles and other claims, with his own funds.

This respondent also claims, in substance, that while Thomas T. Renick intended, of his own bounty, to provide for the devisees of said Renick Huston, out of the proceeds of the lands so purchased by him, said devisees had no legal claim or right whatever to any such provision. That the complainant, Job R. Renick, although he held the naked legal title to said lands, did not set up any claim thereto, either in his own right, or in any representative capacity, during the lifetime of said Thomas, but, on the contrary, said Thomas, during his lifetime, freely made sales of the lands held by said Job, who, thereupon always executed deeds as directed by said Thomas, who received and disposed of the proceeds of the sales as his own; and that no part of the same ever passed into the hands of said Job, or was in any manner disposed of, or claimed by him.

This respondent also sets forth certain matters relating to the estate of one Andrew Huston; and to a like note pledged to J. C. Ayer & Co., and involved in case No. 221, of the present term, and other matters concerning some of the other appellees, but the same are omitted from this abstract, as not relevant to the questions to be discussed on this appeal.

Respondent, further answering, sets forth that during the lifetime of said Thomas, he purchased an interest in a printing-press manufacturing business, carried on at Canton, Ohio, and became a partner therein, owning a third of the assets and business of the firm. That at the time of his death, said Thomas, well-knowing that the business would require further aid and assistance from his estate, provided, by his will, that respondent, as his executor, should continue the interest of said Thomas in the business, and manage and care for the same in such manner, and for such time, as the respondent, in his discretion, should deem best.

He also says that owing to the financial panic of the year 1873, and the somewhat experimental character of the business, it became necessary that he should, from time to time, as the executor of Thomas T. Renick, furnish money from the funds and securities belonging to his estate, to aid and protect said business.

About March 2d, 1874, the respondent purchased the interest of one of the surviving members of the firm, and became a partner therein, after which time the business was carried on under the firm name of B. F. Renick & Co. The interest of the estate of said Thomas in the business, was unchanged by the respondent's purchase.

Respondent then sets forth that while the printing-press business was steadily improving, and giving good promise of success, and finally of
solutely necessary to the carrying on of the business, and to the protection of the estate of said Thomas T. Renick involved therein, to borrow money to discharge the liabilities of the firm. It was expected that such loans would be paid out of the future profits of the business. Accordingly, the sum of $30,000 was borrowed from the First National Bank of Westboro', and for this sum the respondent, as the executor of Thomas T. Renick, indorsed the note in controversy, made by said Harvey, and payable to the order of said Thomas T. Renick, and delivered the same to the bank, as security for the money advanced to the firm.

The respondent also charges that the complainant Smith had knowledge of, and participated in the use of the funds of the estate of Thomas T. Renick, in carrying on the printing-press business at Canton; and that the paper given by said complainant when the time for the payment of the Harvey note was extended, was wrongful and surreptitious, and contrary to the rights of respondent and other parties.

The respondent denies that the printing-press firm was insolvent at the time when the note was pledged, and its proceeds used, but that, so far as he then knew or believed, the using of such proceeds would result in the full and complete success of the business.

THE ANSWERS OF THE OTHER APPELLEES are omitted from this abstract, as not necessary to be considered on the present occasion. A replication was filed to the answers abstracted.

II.

THE EVIDENCE.

Printed Case, p. 68. The evidence on which the cause was heard and the bill dismissed, was taken between the complainants and the Bank only. No evidence was taken as to any other of the defendants.

A STIPULATION signed by the counsel who represented the Bank in the court below, admits, among other things, the original ownership of the land in question by Andrew Huston, and his death, devising the same to his son, Renick Huston; and the death, of the son, leaving a will, in which he appointed Thomas T. Renick his executor, and the appointment of Julius Rosenthal, administrator in Illinois, of the estate of Andrew Huston; and that in certain proceedings in the Probate Court of Cook County, and under a bill filed by Anna Marsh, devisee, against Thomas T. Renick, executor of Renick Huston, in the United States Circuit Court for the Northeren District of Illinois, the lands were sold and conveyed to Job R. Renick.

Also, that said Thomas died in August, 1873, leaving a will, of which the appellee, Benjamin F. Renick, was appointed the executor. A copy of that will is appended to the stipulation. In September, 1873, the complainants were appointed administrators, etc., of Renick Huston.

The same stipulation also admits that although Job R. Renick became seized in fee simple absolute of the lands, yet, by some arrangement between the parties interested, but which does not appear of record, he held it in trust for the benefit, (*a*) of the estate of Renick Huston; (*b*) and of Thomas T. Renick.

And that about July 15th, 1872, said Job R. Renick, and Thomas T. Renick, (*a*) as administrator, etc., of Andrew Huston, (*b*) and as executor of the will of Renick Huston; (*c*) *and in his own right* conveyed the land to Harvey, for the consideration of $157,000, of which the note for $39,250, now in controversy, was for a part.

The notes taken for the purchase money were all payable to the order of Thomas T. Renick, at Chicago, and were secured by a trust deed on the premises.

These notes were dated July 15th, 1872. The one in controversy was payable three years after date, and accordingly would have matured July 15th, 1875, but September 12th, 1874, the time for the payment of this note, and another note of the same kind, was extended by an instrument in writing executed by Benjamin F. Renick, as the executor of Thomas T. Renick, for a time not to exceed two years, under which extension this note, in fact matured July 15th, 1877. Printed Case, p. 86. A like paper of extension was signed by the complainant, Smith, as administrator and attorney for the estate of Renick Huston and Thomas T. Renick. Printed Case, p. 81.

This note, thus extended, was pledged to the First National Bank of Westboro', for the loan of $30,000 above mentioned, June 21st, 1875. Printed Case, p. 84.

Any notice that Job R. Renick held the land in trust is most expressly and entirely denied by each and all the defendants. Printed Case, p. 70.

It is certain that no person in any way connected with the Bank had any notice or knowledge whatever of any such person as Renick Huston; or that any person or persons claimed any interest in the note in controversy as the representatives of said Huston, or of his estate, or of said Job R. Renick; or that said Huston ever had any relation whatever to the lands for which the note was given. Evidence of J. E. Fay, Printed Case, p. 84.

THE STATEMENT OF J. EDWARDS FAY, (Printed Case, p. 83), read in evidence as a deposition, also shows that the note in controversy was first delivered to him, as the attorney of Thomas T. Renick; and that it was afterwards assigned to the bank by Benjamin F. Renick, as executor of the will of Thomas T. Renick, as security for the loan of $30,000. The firm of B. F. Renick & Co., at the same time, gave their note for the money borrowed. Mr. Fay's statement also shows that at the time of this transaction, the financial standing of the firm was excellent, according to the commercial reports; and that it was then believed that the firm was making a profit of from one thousand to two thousand dollars per month, and would be amply able to pay all the loans they were making; and that Benjamin F. Renick, individually, was believed, on information deemed entirely reliable, to be worth from one hundred and fifty thousand to two hundred thousand dollars. Mr. Fay, who negotiated the transaction with the Bank, was the attorney of the executor, and had been the attorney of the testator. He also states that he had not the slightest doubt that the firm of B. F. Renick & Co. was solvent, and entitled to the high rank which it then held according to the commercial reports.

THE DEPOSITION OF COMPLAINANT SMITH was taken on behalf of himself and the other complainants. He testified in chief, among other things, that he was the attorney of Thomas T. Renick for many years, and that he executed the paper of extension to which reference is above made; and that the complainant Job R. Renick, held the legal title of the land in trust, and had no beneficiary interest in it; and that Thomas T. Renick had no interest in the property, except as one of the devisees of Renick Huston; and that said Thomas became the administrator of Renick Huston; and that he advanced some twenty thousand or twenty-five thousand dollars to clear the title to the lands, but it had all been refunded to him out of sales of the property; and that the note in controversy belongs to Renick Huston's estate; and that he was the attorney for said estate, and attorney for Thomas T. Renick, and drew the wills of both of them; and that said Thomas died in August, 1873; and that he notified Mr. Fay of the claim in behalf of the estate of Renick Huston, as early as September 12th, 1874; and that no part of the estate of Renick Huston would be permitted to go into the printing-press business; and that he refused his consent to the delivery of the note to B. F. Renick, when the latter applied to him for such consent; and that he did not know of the agreement of extension, signed by B. F. Renick, until long after its execution.

On cross-examination this witness testified in substance that there was no evidence in writing of the alleged trust in Job; and that the lands were encumbered by tax-titles, judgments, and a suit, at the time of the judicial sale thereof under which the title was vested in Job R. Renick; and that at the time of such sale Thomas T. Renick held the adverse claims to the land, having paid $20,000 for them; and that when he testified that the note in question, with the other notes taken for the land, belonged to the estate of Renick Huston, he meant that they were given for property that had belonged to said estate; and that there was no money belonging to the estate of Renick Huston in the hands of Thomas T. Renick when he purchased the tax-titles, etc.

The language of the witness is somewhat obscure, but he appears to mean that after the title of the lands was vested in Job R. Renick, Thomas T. made sales from which he received more than he had expended about the property.

His assertion that the note in controversy belongs to the estate of Renick Huston, appears to rest only on his opinion that the title of the estate of Renick Huston was not divested by the judicial sales above mentioned. He also says that there was no settlement of the business of the printing-press firm, after the death of Thomas T. Renick, but that his executor continued the business as before.

Witness also states that Thomas T. Renick never made any report or statement in writing, showing that he held or managed the lands in question in trust for the estate of Renick Huston, and that there is no record in regard to the matter.

He also testifies that on the sale of the lands to Harvey, the notes for the unpaid part of the purchase money, were taken by Thomas T. Renick, as an individual, and the witness admits that he never saw any paper relating to the lands, that contained any allusion to the estate of Renick Huston.

The separate agreements of extension, signed, one by the complainant Smith, and the other by the defendant B. F. Renick, and the will of Thomas T. Renick were also read in evidence. These documents have already been mentioned in this abstract, and the most important provisions of the will quoted.

This is the substance of the evidence.

III.

POINTS AND AUTHORITIES FOR APPELLEES.

1. Appellants Pleadings and Proofs Fatally Defective.—The decree of the Court below dismissing the Bill of Complaint, was right and should be affirmed. It was required as well by the insufficiency of the complainant's case, as by the superior equity of the defense.

The pleadings and proofs of the appellants are fatally defective. They do not show a legal title, much less an equitable title to the promissory note which is the subject matter of controversy.

In equity as well as at law, the plaintiff must recover on the strength of his own title, and a complete equitable title must be shown to entitle him to relief, as at law a complete legal title must be established to authorize a recovery. *Grand Gulf R. R. Co.* v. *Bryan*, 18 Miss., 234. There can be no pretense that any legal title was shown by the appellants. Neither can there be any just claim that the equity of their case is at all to be compared with that of the appellees. For neither the complainants, nor any one whom they represent, appears ever to have paid or parted with any consideration whatsoever, for or on account of the note in controversy. Neither is it shown that any creditor of the estate of Renick Huston, or any creditor of the estate of Thomas T. Renick, remains unpaid. The bill dismissed sought to recover not even an alleged gift in specie, but to follow its supposed proceeds into the hands of an innocent holder, who paid full value, without notice of any adverse claim.

The First National Bank of Westboro' actually parted with thirty thousand dollars ($30,000) in money, when it received the note. This single fact shows the superior equity of the appellees.

2. Complainants are Ohio Representatives, but the Note is Illinois Assets.—The appellants claim as administrators *de bonis non*, with wills annexed, of certain Ohio testators. But the promissory note in question was taken for a part of the purchase price of certain Illinois lands. It was made under the laws of Illinois, and is payable in that State, and by a citizen thereof. It

therefore does not belong to the Ohio assets of the complainants testators; but it does belong to the Illinois estate of Thomas T. Renick, and is therefore, for most purposes, to be governed by the laws of the latter State. The Illinois statute, Hurd's Comp., 107, § 42, authorizes foreign executors and administrators to prosecute suits to enforce claims of the estate of deceased, in cases where no letters testamentary, or of administration, have been issued in the State, but there is no provision changing the rules of inter-state law applicable to the estates of deceased persons.

It is well known that the several United States are in contemplation of law, foreign to each other: 1 Bouvier Inst., 83; and, as a general rule, property acquired under one administration cannot be sued for under another, although then within the territory of the latter. Story's Conflict of Laws, § 512. The distribution of assets among creditors is governed altogether by the law of the *situs*, and not by the law of domicil. Ibid., § 524, 525. Hence, the local laws of Ohio can have no primary application to the disposition of the note in controversy, a part of the Illinois estate of Thomas T. Renick; but any claim of the Ohio estate of Renick Huston must be regarded as subordinate to all claims properly arising under the Illinois law, or the general commercial law of the country.

3. THE LEGAL TITLE TO THE NOTE SUED FOR WAS DULY TRANSFERRED FOR VALUE, ETC.—The promissory note in question was payable, by its terms, to Thomas T. Renick. His executor, B. F. Renick, indorsed this note, and delivered it to the First National Bank of Westboro', together with a note of his firm of B. F. Renick & Co., of the assets of which firm, the estate of Thomas T. Renick was a part owner, and thereupon received from

the Bank the sum of $30,000 in money, which was paid when the paper was delivered.

The will of Thomas T. Renick expressly provides for the continuance of his interest in the firm, at the discretion of his executor. The money was borrowed and used for the protection and preservation of the business of the firm, in conformity with the plain intent and meaning of the will of one of its owners. There was absolutely no notice of the claim now made by the complainants. The whole legal title and power of disposition was in B. F. Renick at the time of the transfer to the Bank. By the commercial law of the world, the transfer by him to the Bank was valid. Under a fair interpretation of the provisions of Thomas T. Renick's will, the pledge of the note, and the investment of its proceeds in the business of the printing press firm of B. F. Renick & Co., were wholly within the personal discretion of B. F. Renick, the executor.

4. THE RIGHT TO ASSIGN THE NOTE UNQUESTIONABLE. —From the earliest periods of the English law, there is manifested a disposition to apply a more favorable construction to wills than to other legal instruments. 1 Red. Wills, 3d Ed., 419. Hence the Court will incline to carry into effect the plain intention of Thomas T. Renick to provide for the continuance for his interest and liability in the printing-press firm; and will accordingly hold his executor authorized to dispose of the note in controversy, and to apply the proceeds of that disposition for the benefit of the business at Canton, Ohio. If doubts arise upon the language used, they will be resolved in favor of the evident intention of the testator. It is submitted however, that the language of the will is quite free from any serious doubt, and is ample to warrant the

disposition made of the note. 3 Red. Wills, 137; *Farhall* v. *Farhall*, L. R., 7 Eq. Ca., 286.

Thus the authority of B. F. Renick, as executor of Thomas T. Renick, to assign and pledge the promissory note to the First National Bank of Westboro', as security for the $30,000 borrowed by him, is clear. There is not, nor can there be any suggestion, much less any distinct charge, that even the executor, much less the Bank, had any purpose, or even any thought that the transaction would involve any fraud upon, or loss to the estate, either of Thomas T. Renick, or of Renick Huston. The business was fairly and openly done, and was an honest endeavor on the part of the executor to discharge the duties imposed on him by the will. 3 Red. Wills, 226, 236; *Hough* v. *Bailey*, 32 Conn., 288.

It is of importance, says the Vice Chancellor, in *Miles* v. *Durnford*, 2 Simons, 239, to give to executors uncontrolled power over the assets, and therefore the law gives them the right of dealing with the assets to raise money for the purposes of a testator's estate; and then the *onus* of showing that it was wanted for such purposes, is not thrown upon the party advancing the money. It is sufficient for him to show that he had no fair ground or reason to believe that the money was not wanted for executorship purposes.

The general rule, both of law and equity is clear, that an executor may dispose of the assets of the testator; that over them he has absolute power, and that they can not be followed by a testator's creditors. Title derived from him by way of purchase, is of the same force and validity precisely, as if he were the absolute owner of the effects, with the single exception of a collusive and fraudulent sale. 3 Red. Wills, 130, and note; *Whale* v. *Booth*, 4 T. R., 625.

It is to be observed that the note in controversy is not made *a specific legacy* under the will, and therefore decisions which hold against the power of an executor to transfer such a legacy, can have no application to the present case.

Even one of two or more executors may transfer paper made payable to a testator. *Dwight* v. *Newell*, 15 Ills., 335, and cases cited.

Appellants contend that the promissory note is a part of the proceeds of certain lands which, in his life time, belonged to Renick Huston. But they concede that Thomas T. Renick, under the will of Renick Huston, was at least a part owner of the lands, and of their proceeds. It must also be conceded, at least that Thomas T. Renick acted as the agent of all parties interested in the disposition of the lands, and of their proceeds; and that he took the promissory notes for the purchase-money of the lands sold, at least in part to re-imburse himself for the expenditure of a large sum of money in perfecting the title to the lands. And it is a general rule that where an executor pays money for an estate, he may take any portion of the estate in payment, and the part which he elects, not exceeding the amount paid by him, becomes absolutely his property. 1 Red. Wills, 131; *Petrie* v. *Clark*, 11 Serg. & R., 388.

Now, it is admitted that Thomas T. Renick had advanced a large sum of money to perfect the title to the lands in question, and hence, even conceding that he acted as the representative of the estate of Renick Huston, he would be authorized to take and collect the notes for the price of the land, and repay himself out of proceeds.

Being thus, at least a part owner of the lands, and a part owner of the promissory notes taken for them, and the agent of all the parties in interest, it would seem that his legal and equitable power to assign and transfer any such promissory notes, would be simply beyond dispute.

5. THE POWER GRANTED BY THE WILL, AMPLE TO PROTECT BOTH EXECUTOR AND BANK.—Upon examining the will of Thomas T. Renick, it will first be observed that the testator believed there would be a surplus of his estate after the satisfaction of all his debts, and the specific devises and bequests.

It will also be observed that the provision for the payment of his debts outranks all the other provisions of the will, and thus conforms to the general rule of law, which gives precedence to creditors over persons provided for by the bounty of a testator. This provision for the payment of debts, extends as well to the debts of the Canton co-partnership, for which Thomas T. Renick was liable, as to any individual debts which he might owe at the time of his death.

The testator, after reciting that he held an interest in the Canton printing-press firm, then doing business under the firm name of Tower, Claassen & Co.; and that said interest was paid for out of funds belonging, one-third to himself, one-third to his sister, Mary Gregg, and one-third to the children of his brother, Jonathan Renick; then requested that the whole interest in the firm be held and retained so long as his brother B. F. Renick, whom he appointed executor, might, in his discretion, think the same would be profitable; and added the desire that the same should be under the control and management of said B. F. Renick. As to his own interest in the firm, he added the desire that it should be held, controlled, and managed by his brother, the executor, for the benefit of said executor, and the children of his deceased sister, Catherine Darst, and the children of his deceased brother, Jonathan Renick, and the son of his sister, Mary Gregg—share and share alike; and, thereupon, he gives and bequeaths all his interest in the firm to his brother, B. F. Renick, executor, in trust for himself and the nephews and nieces named, in equal proportions, to be held, retained, and controlled by said B. F. Renick, so long as he, in his discretion, may deem advisable.

The word "desire" is evidently used as the equivalent of a direction.

The provision of the will authorizing the executor to continue the press-works business, in his discretion, was valid; and the interest in the firm devised to him, was assets in his hands. *Gandolfer* v. *Walker*, 15 Ohio, N. S. 274.

The question now arises whether under this will, Benjamin F. Renick had authority to invest any money in the Canton press-works for the protection of the interest therein, which he received under the will. It seems perfectly clear that he had such authority. The discretionary power vested in him by the will should be favorably regarded by the Courts, and liberally construed to effect the intention of the testator. As a general rule, the executor has the same power over the estate of his testator as the latter had in his lifetime, including the absolute power of disposition of the personal estate. It is also a general rule of law, that even an administrator, and much more an executor, who acts in good faith, will be protected in his disposition of the estate committed to his charge, no matter whether the result of an honest and faithful endeavor to execute his duty resulted favorably or unfavorably to the estate. These general rules are fundamental and familiar law, and if there be exceptions, it is for those who insist upon them to establish their existence, and show a case clearly within the exception for which they contend.

Under the will of Thomas T. Renick, his interest in the press-works, at Canton, was committed to the charge of his brother, B. F. Renick, in such words as clearly convey the idea that the testator intended that his brother should have the same care, control, and discretion respecting that interest which the testator himself exercised while he lived. If the interest in the press-works was to be continued for the purpose of reaping the benefits of the business, it is both sound reason and sound law, that it must be so continued at the hazards of the business.

When Thomas T. Renick directed the continuance of his interest in the manufacturing business, it was neither in his power, nor in the power of his executor for him, to allow it so to remain, and reap the profits of success, without leaving it still liable to share the losses of disaster, if any should occur. All the powers of the executor in regard to the press-works, are given in broad and general terms. They are devoid of any limitation or restriction whatsoever. The condition of the press-works at the time of Thomas T. Renick's death, and at the time of the loan by the First National Bank of Westboro', appeared to be prosperous, and to give strong assurance of ultimate success. This is averred in the answer of the executor, and proved by the evidence of Mr. Fay. Had not Thomas T. Renick and his executor both believed that the interest was valuable, and would eventually return an adequate profit, they would not have made or continued their investments in it. It was clearly the duty of B. F. Renick, under the will, to care for and protect the interest in the press-works committed to his charge. He, himself, became a part-owner of the business, and this is a further proof of his faith in it, and his belief in its ultimate success. The guaranty which the testator provided, of due care on the part of his executor, was the self-interest secured by the devise to him. The other devisees plainly took their interests in subordination to the discretionary powers of the executor over them, to manage and control them as he should judge most expedient for all concerned.

6. Illustrations of the Power Granted.—Let us now put three cases to test the reasonableness and propriety of the power of B. F. Renick over the interests in the press-works, devised to him:

First Case. Suppose, at the death of Thomas T. Renick, there had been a mortgage for a thousand dollars on real estate of the firm worth ten thousand dollars, and that this mortgage had matured, and that, under it, there was a power of sale on short notice without resort to the courts, and without redemption, and that all the funds of the firm were so in use that there was none to discharge the mortgage, and the property had been advertised, and the day of sale had arrived. Can it be doubted that under the will, B. F. Renick would have had the power, and that it would have been his duty to advance the money due out of funds belonging to the estate, for the purpose of protecting it against the impending loss?

Second Case. Let us suppose that, from the delay of collections or other cause, the firm had been unable to meet a note for a thousand dollars, and judgment had been entered upon it, and a levy made on presses of the value of ten thousand dollars, and the same had been advertised for sale, and the day of sale had arrived, and it was probable that for want of other bidders the creditor would bid in the property for the amount of his debt; and B. F. Renick had in his hands, funds of the estate of Thomas T. Renick sufficient to pay the debt. Can it be doubted that he would have had authority, and that it would have been his duty to save the estate from the threatened injury?

Third Case. Let us suppose that, from any cause, the firm had been unable to realize money, and a piece of commercial paper for a thousand dollars had fallen due in bank, and would go to protest unless the amount were paid, and thereby break the credit of the firm, and bring on a crisis which would cripple or destroy its business; and that B. F. Renick had funds of his testator which he could apply to the paymant of the note. Can it be doubted that it would have been alike his power and his duty to make the payment, and avert the peril?

It is a maxim of lawyers that extreme cases illustrate wise rules. The principle of the cases suggested, applies to the act of B. F. Renick in pledging the note in controversy. The Canton business imperatively demanded pecuniary assistance. Without it, he believed the business would fail. With it, he believed the business would succeed. He believed that the will authorized him to use the estate of his testator in protecting the business. In pursuance of that belief he exercised his power, pledged the note, raised the money, and invested it in the business. There is nothing in the record to show that he did not act faithfully and prudently in the light of the circumstances by which he was then surrounded. That the Canton business did not succeed, and that losses were ultimately suffered, argues nothing against the good faith, or even the prudence of the act at the time when it was performed. For aught we can know, the failure occurred from causes of such a nature that even the most careful judgment could not then discern them.

Had the executor not made the endeavor he did to protect the interest and save the business, we should, doubtless, now have these same complainants insisting that, for a neglect of his duty so to do, he ought to be held liable for the losses arising from the failure.

Thus it is insisted that even B. F. Renick the executor, was not guilty of any fraud, wrong, or excess of authority in pledging the note in controversy for money advanced, and investing it in the press-works at Canton, Ohio. And if he could not be held liable for an abuse of his authority, much less can the Westboro Bank, an innocent third party, taking the legal title of the note for an abundant consideration paid at the time, and without notice of complainant's claim, and, above all, without thought of any wrong, and without any participation in any wrongful act, be adjudged to suffer the penalty of a fine in equity, which would now amount to nearly forty thousand dollars. For, if the Bank must lose that sum of money, it must be adjudged to lose it as the penalty of misconduct so gross and flagrant, so reprehensible and abhorrent to the conscience of the Court, that even such a punishment can be considered no more than equal to the enormity of the offense.

The bare suggestion of such a penalty for the acts of the Bank set forth in the record, refutes the possibility of its infliction.

7. THE SUPPOSED TRUST A MERE EXPECTATION, ETC. —If we admit the existence of any general understanding that after Thomas T. Renick should be re-imbursed for his expenditures about the Illinois lands, the surplus should be treated as common estate and distributed among the various devisees of Renick Huston; still it is not pretended that any memorandum in writing, declaring a trust was ever executed; and hence the supposed trust becomes, in the eye of the law a mere expectation, without any binding legal or equitable force. It could not be known before the advance in prices, and the actual sale of the property, whether any margin would ever be realized above the investment of Thomas T. Renick, in the titles he purchased. It was a mere supposition that there would ever be any profit upon the venture. No such understanding, intention, or supposition will be held sufficient to create a trust enforcible in equity. If the supposed arrangement had been ever so clear and specific, had been established by ever so clear evidence in

writing, it would still form only the ground for a claim against the estate of Thomas T. Renick. It could not avail to attach a trust even to the lands, much less to the promissory notes as the proceeds of the realty.

Complainants now assert a trust, but there is no evidence in this record that Thomas T. Renick, or B. F. Renick, ever admitted any such trust. The testimony of Mr. Smith, given under the strong bias of his interest as complainant, is still weak and uncertain in its statements of pure matters of fact, and consists of little more than his inference and opinion, that under the circumstances of the case a trust existed. He overlooks the distinction between a mere claim to share in possible profits from the proceeds of future sales, and a trust attached to the body of the assets, and holding them by virtue of its equitable lien.

All the presumptions of the law of the case are in favor of the appellees. The policy of the law as expounded by this Court, strongly upholds the validity of the transactions which are assailed. If in fact there was any such trust as appellants contend, surely it must be held secret and fraudulent as against the First National Bank of Westboro', and absolutely without merit as a ground for the recovery of the note in controversy.

It will be observed that the proceeds of the pledge were not used to discharge a merely personal debt of the executor, but that they were applied under the will of Thomas T. Renick, and in pursuance of its terms, to discharge liabilities for which the estate of Thomas T. Renick was responsible.

8. CONCURRENCE AND LACHES OF THE COMPLAINANTS, AND THOSE FOR WHOM THEY CLAIM.—The case shows that the legal title to the lands mentioned in the bill of com-

plaint was vested by certain judicial sales in Job R. Renick, in fee, without any declaration of trust in regard to them. It also shows that while Job R. Renick held that title, Thomas T. Renick sold and disposed of the lands, as though they were his own; and that he took notes for the purchase money, payable to himself, as in his own right; and that Job R. Renick conveyed the lands upon such sales at the request of Thomas, without any complaint or opposition, or any assertion, so far as the case shows, of the trust now alleged.

Even if Thomas T. Renick had been the administrator of Renick Huston, duly appointed under the laws of Illinois, and had purchased the lands at his own sale thereof, such a purchase would not have been void, but voidable only, and might have been ratified by the parties in interest. And if they are not satisfied with the sale, they must seek to have it set aside in apt time, and without any laches, or a ratification of the sale will be presumed. But the sale and conveyance to Harvey, the maker of the note in controversy, were made July 15th, 1872, and the sale and conveyance to Job R. Renick July 12th, 1871.

Sloan v. *Graham*, 9 Legal News, 374.

The will of Thomas T. Renick, which is a part of the appellant's case, shows that Job R. Renick was his co-partner, and that the business relations between them were so intimate and confidential, that the keeping or making of any regular accounts between them was wholly waived. The case also shows that for many years the appellant, Palmer C. Smith, was the attorney, not only of Thomas T. Renick, but also of B. F. Renick, and of the estate of Renick Huston. Hence, we may conclude that it was simply impossible that the transactions of Thomas T. Renick, in regard to the Illinois lands, involving such large sums of money, and the vesting of title to so valuable a body of lands in his co-partner, could have taken place without full knowledge thereof on the part of both Palmer C. Smith and Job R. Renick, and the parties for whom they claim.

If there has been any neglect of duty in the transactions brought to bar by this case, it is to be found in the conduct of the complainants. They stood by for years, and without remonstrance or attempt at prevention, saw the transactions go forward, of which they now complain, and upon which they seek to deprive the First National Bank of Westboro', of the sum of $30,000 in money, besides the interest accrued thereon. To permit them to succeed in any such endeavor would be but to let them take advantage of their own confessed wrong, and thereby to profit by a fraud wrought through their connivance upon the party whose capital has been invested in the business expressly committed to the personal discretion of B. F. Renick, the assignor of the promissory note, who became its legal payee upon the death of Thomas T. Renick.

Mr. Smith testifies that he drew the will of Thomas T. Renick, but nothing is said in that will about the proceeds of the Illinois lands, or any trust in the promissory notes taken upon the sale thereof; or any claim for any part of the proceeds of said notes. If any such trust or claim had existed, what would have been more readily thought of and provided for, than such a trust or claim.

The relations of the complainants to the transactions out of which their present complaint arises, would seem to disqualify them to maintain the present suit. *Miles* v. *Durnford*, 2 Simons, 240.

9. THE NOTE NOT DUE WHEN TRANSFERRED.—The note in controversy was not due when it was pledged for the money borrowed. The original time of payment had not arrived. But if it had, the extension of the paper by contract, operated to make the note the same in legal effect as though originally made payable at the later date. It was originally made payable July 15, 1875; and Sept. 12, 1874, was extended by an agreement in writing, for a period not exceeding two years. But as the transfer to the Bank was made before the original day of payment, no question in regard to the effect of the extension, can arise in this case.

But even if the paper had been overdue, that fact could be held to give notice of no other equities than those existing between the maker and the payee. The rule does not extend to equities in behalf of persons not parties to the paper, and hence would be of no advantage to the complainants.

It is said by high authority, and on good reason, that a defense must arise from the note itself, or the transaction in which the note originated, and not from any collateral matter. 1 Parson's Con., 256, and cases cited.

10. THE TRANSFER TO THE BANK CANNOT BE IMPEACHED, UNLESS FOR ACTUAL FRAUD.—*Mere suspicion of a defect of title, or knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or even gross neglect on the part of the taker at the time of the transfer, will not, as a general rule, defeat his title to a negotiable instrument. Nothing but participation in a fraud will have that effect, where the transfer is otherwise regular, and for a sufficient consideration.*

To defeat the title of the assignee of a negotiable instrument, transferred for value before maturity, it is not sufficient merely to allege that he is not a *bona fide* holder. Bad faith must be distinctly charged and established against the taker of the paper.

The contrary doctrine is exploded, both in this country, and in England. 1 Daniel Nego. Inst. p. 576–584, § 769–776, and cases cited; 1 Parson's Con., 254–5; *Walker et al.* v. *Craig*, 18 Ill., 118.

The amount of consideration is immaterial, unless it be so small as to constitute evidence tending to show fraud. 1 Daniel Nego. Inst., 584, § 777.

Even a pre-existing debt is a sufficient consideration. Ibid., 145, § 184.

And a transfer before maturity, by indorsement passing the legal title, as collateral security for a debt contracted at the time of the indorsement, constitutes the indorsee a bona fide holder for value, in the usual course of business, and entitled to protection against equities and off-sets, and other defenses available between antecedent parties. Ibid., 618, § 824, and cases cited.

11. THE POWER TO PLEDGE THE NOTE IS CLEAR.—In general, the power to sell, carries with it the power to make a pledge.

Gordon v. *Preston*, 1 Watts, 385.
Jackson v. *Brown*, 5 Wend., 594.
Curtis v. *Leavitt*, 15 New York, 161.

A pawn for money advanced at the time, depends on the same considerations as an absolute sale.

Petrie v. *Clark*, 11 Serg. & R., 388.

In *Russell* v. *Plaice*, 18 Beavan, 27, the Master of the Rolls thus states the rule in regard to advances to an executor, secured by assets. It is established by the cases, that a mortgage of the assets of a deceased person made by the legal personal representative for money advanced at the time by the mortgagee, who is not acting collusively with the executor or administrator, cannot afterwards be called in question, even though the executor or administrator should subsequently apply that money to his own use. Were it otherwise, no one could safely deal with a legal personal representative, and the persons interested in the estate would be prejudiced by reason of the fetters which would be thus imposed on executors, in dealing with the assets they are bound to administer.

If an administrator make a pledge of the assets for a present advance of money for the use of the estate, it will be held to be a valid transaction; and if a sale, or pledge, or mortgage is afterwards made for a previous advance made in good faith, for the alleged benefit of the estate, it will be held valid. Of course, knowledge on the part of the purchaser that the executor or administrator is dealing with the assets in a fiduciary capacity, is not enough to raise any suspicion, for the reason that it is the duty of the administrator to dispose of the assets, and settle the estate. The mere fact that the word trustee is on the face of securities, cannot put a purchaser to any inquiry beyond ascertaining whether the trustee has power to vary the securities. And if he has such power, a purchaser in good faith will be protected, although the trustee used the money for his private purposes. Perry on Trusts, § 225, and cases cited.

No stranger can safely be said to know, from the mere fact that the effects form a part of the assets of an estate, that the personal representative who attempts to dispose of them by way of mortgage or pledge for money advanced, is dealing unfairly with them, and going beyond the lawful demands of his office, since there are many occasions where the executor or the administrator may have just reason to raise money in that mode to meet the exigencies of that position. He may be compelled to pay a mortgage debt upon real estate at a particular time to save a foreclosure of the title, and the time may not be sufficient to effect that by a sale, or there may be other conditions or limitations which may impose a similar necessity upon him. 3 Red. Wills, 231.

12. THE LAW OF THE CASE AS DECLARED BY THIS COURT.—The case of *Goodman* v. *Simonds*, 20 How., 343, and *Murray* v. *Lardner*, 2 Wall., 110, are leading authorities on the main question in this case.

They hold, among other things, that possession and title of negotiable paper, are one and inseparable.

That a party who takes such paper before due, for a valuable consideration, without knowledge of any defect of title, and, in good faith, holds it by a title valid against all the world.

That suspicion of defect of title, or the knowledge of circumstances which would excite suspicion in the mind of a prudent man, or even gross negligence on the part of the taker, at the time of the transfer, will not defeat his title. That result can be produced only by bad faith.

That the burden of proof lies on the person who assails the right claimed by the party in possession.

Such is the settled law of this Court. Where there is no fraud, there can be no question; and there is no fraud in the present case. There is no difference in principle between bank notes and money, nor any distinction between bank notes and other commercial paper.

It seems now also to be agreed that if there was a present consideration at the time of the transfer, independent of the previous indebtedness, then a party acquiring a negotiable instrument before its maturity, as collateral security to a pre-existing debt, without knowledge of facts which impeach the title as between antecedent parties, thereby becomes a holder in the usual course of business, and that his title is complete, so that it will be unaffected by any prior equities between other parties. *Goodman* v. *Simonds*, 20 How., 371, citing *White* v. *Springfield Bank*, 3 Sandf., 222. *New York M. Iron Works* v. *Smith*, 4 Duer., 362.

The Westboro' Bank was not bound to inquire what use the executor proposed to make of the money, nor why the loan was made by his firm, nor what were the relations between it and the estate of Thomas T. Renick. Finding the power of the executor to transfer the note complete, the Bank need not inquire further. For there are many cases, as is said above, where it may be necessary for an executor to raise money by mortgage or pledge, to meet the exigencies of his position. Mere absence of actual fraud is sufficient to protect the Bank.

13. EVEN AN EXECUTOR OR ADMINISTRATOR NOT LIABLE FOR LOSS, IF HE ACT IN GOOD FAITH.—The cases are numerous wherein it has been held that an executor or an administrator is not responsible for the loss of property, so long as he acts in good faith, and with ordinary discretion. 3 Red. Wills, 413. Hence, having acted in good faith, and with ordinary discretion, under the will of Thomas T. Renick, his executor will not be held responsible for any loss that has occurred in consequence of his action. Much more must the Bank be held entitled to protection for its advancement of the money. *Christy et ux.* v. *McBride*, 1 Scam., 78; *Rowan* v. *Kirkpatrick*, 14 Ill., 1.

There can be no doubt of the power, even of an administrator, to collect or sell and negotiate promissory notes, nor of his power to pay debts without order of Court for such payment, for it is a general rule of law and equity that an administrator has the absolute power of disposal of the whole personal estate. *Walker et al.* v. *Craig*, 18 Ill., 116; Williams on Ex'rs, 796, and n.

Applying the principles of the foregoing authorities to the present case, I respectfully submit that the decree of the Court below was clearly authorized and required, both by the law of the land and the equity of the case, and that it should accordingly be affirmed.

I have not as yet received the abstract, points and authorities of counsel for appellants, and, therefore, cannot now submit any formal reply thereto. But I desire to reserve the privilege of such reply, in case it should seem expedient, after an examination of appellant's brief.

C. C. Bonney

Counsel for First National Bank of Westboro'.

156 Washington street, Chicago.

Supreme Court of the United States.

No. 221.—October Term, 1878.

Palmer C. Smith et al., Adm'rs, &c.,
Appellants,
vs.
J. C. Ayer et al.

Extract from Revised Statutes of Illinois, 1874, page 112.

Chapter 3.

ADMINISTRATION OF ESTATES.

* * * * * *

Foreign Executors and Administrators.

"§ 42. When any person has proved or may prove the last will and testament of any deceased person, and taken on him the execution of said will, or has obtained or may obtain administration of the estate of an intestate in any state in the United States, or in any territory thereof, such person shall be enabled to prosecute suits to enforce claims of the estate of the deceased, or to sell lands to pay debts, in any court in this state, in the same manner as if letters testamentary or of administration had been granted to him under the provisions of the laws of this state: *Provided*, that such person shall produce a copy of the letters testamentary or of administration, authenticated in the manner prescribed by the laws of Congress of the United States for authenticating the records of judicial acts in any one state, in order to give them validity in other states: *And, provided*, that said executor or administrator shall give a bond for costs, as in case of other non-residents.

"§ 43. Nothing contained in the preceding section shall be so construed as to apply to cases where administration is obtained upon the estate of any intestate nor where letters testamentary are granted in this state; and when, after any suit is commenced by any administrator or executor under the provisions of the preceding section, and before final judgment thereon, administration is had, or execution undertaken within this state, under the laws of the same, upon the estate of any decedent, upon suggestion of such fact, entered of record, the said resident, administrator or executor shall, upon motion, be substituted as party to such suit; and thereupon the court shall proceed to hear and determine the same, as if it had been originally instituted in the name of the said resident, executor or administrator, and the benefits of the judgment, order or decree shall enure to him, and be assets in his hands."

UNITED STATES SUPREME COURT,

October Term, A. D. 1878.

No. 222.

PALMER C. SMITH, and JOB R. RENICK, Administrators, etc., of RENICK HUSTON, deceased, and EDWARD J. VAN METER, Administrator, etc., of THOMAS T. RENICK, deceased, *Appellants*,

vs.

THE FIRST NATIONAL BANK OF WESTBORO, MASS., JOEL D. HARVEY, BENJAMIN F. RENICK, and others, *Appellees*.

Appeal in Equity from the Northern District of Illinois.

EXAMINATION OF AUTHORITIES CITED IN APPELLANT'S BRIEF.

By C. C. BONNEY.

Counsel for First National Bank of Westboro.

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BY C. C. BONNEY,

Counsel for First National Bank, of Westboro.

Pursuant to the privilege reserved at the conclusion of my brief in this case for the Westboro Bank, I now submit notes of my examination of the authorities cited by counsel for appellants in their brief. The cases are noticed in the order in which they are cited.

1. *Lowry* v. *Commercial Bank of Baltimore et al.* 6 W. L. J. 121.

A careful examination of this case, warrants the statement that it is an authority in favor of the appellees. The position of the Westboro Bank in the present case, is like that of the Merchants Bank in the Lowry case. The doctrine stated on pages 123, 124, 126, is especially in point. But if the opinion in the Lowry case did not warrant the construction here given to it, the case should be regarded as overruled by the subsequent decisions of this court.

2. *McLeod* v. *Drummond*, 17 Vesey, Jr. 152.

The doctrine of this case is stated by Lord Eldon, on page 170 *et seq.* The Master of the Rolls dismissed the bill, and Lord Eldon affirmed the decree. There is nothing in what he says that can fairly be regarded as contrary to the points made for the appellees in the present case.

3. Story's Eq. Juris. Secs. 422, 423 and 424.

The doctrine of these citations accords with the argument for the Bank. They speak of *collusion* with executors in violation of their trusts; and of persons who *know* that an executor is wasting the estate of the testator, to run away with it, or for any other unlawful purpose; and of persons who deal with an executor *knowing* that he is applying the assets to a purpose *wholly foreign* to his trust.

4. *Thomasson* v. *Brown*, 43 Ind. 203.

In this case the purchaser had *full knowledge*, from the nature of the transaction, that the Administrator was acting in violation of his trust; page 206. The whole case is easily reconcilable with the doctrine that a sale or pledge by an executor, without fraud, can not be impeached.

5. *Booyer* v. *Hodges*, 45 Miss. 78.

The rule is stated to be, that an executor may transfer and negotiate paper payable to the testator, or to himself in his representative capacity. But if made in a transaction in no wise connected with the estate, but for the personal gain and advantage of the executor, the title of the assignee may be defeated, for his participation in the fraud.

6. *Latham* v. *Moore*, 6 Jones (Eq.) N. C. 167.

This case is an authority directly in point, in favor of the Westboro Bank. It asserts the general power of the executor. But a sale may be impeached for such *bad faith* as makes the purchaser a participator in the abuse of the executor's power. An executor, when he has advanced funds for an estate, may rightfully appropriate a portion of the estate to reimburse his advances.

7. *Burbank* v. *Payne*, 17 La. 15.

The question of a *bona fide* endorsee, is expressly excluded from this case; p. 16. The general doctrine it declares is local, and contrary to the general rule on the subject.

8. *Tompkins* v. *Weeks*, 26 Cal. 50.

This case has no application to the position of the Westboro' Bank. It is a case of an administrator, and a question of the power which the California Probate Court could confer upon him. It is not a case of an executor, acting under the express authority of his testator, and according to the commercial law of the country. The controversy in the case was on the presentation by the administrator, of his account for allowance. Certain creditors objected to the allowance of items of advances to pay a mortgage, and to discharge obligations against a firm of which the deceased was a member at the time of his death. The order of the Probate Court authorizing the advances to the surviving partner, was held to be beyond its jurisdiction; and the order allowing the administrator's account was reversed and the cause remanded for further proceedings.

9. *Sacia* v. *Berthoud*, 17 Barb. 15.

The doctrine of this case is stated on page 21. The purchaser is safe if he is no party to any *fraud* in the executor, and has no *knowledge or proof* that the executor intended to misapply the proceeds, or was in fact, by the very transaction, applying them to the extinguishment of his own debt, or to his own private purpose. The case depends upon its peculiar circumstances; and is not in conflict with the positions taken in the argument for the Westboro Bank.

10. *Miller* v. *Williamson*, 5 Ind. 219.

This case is in 5 Maryland, not Indiana. It appears on page 236, that when the transaction was consummated, the purchaser had *actual knowledge* that the executor was applying the funds of the estate to his own purposes. And that aside from a statute on which the case partly turns, an executor in the regular execution of his duty may sell, or raise money on the property of the deceased, and the party dealing with him would *not be bound to inquire* into his object. P. 230.

11. *Williamson* v. *Morton*, 2 Md. Ch. 94.

This case will not help the appellants. On page 110, it states the rule to be that a person dealing with an executor, may ordinarily repose upon the general presumption that he is acting in the due exercise of his trust;

yet when from the very nature of the transaction, such person *must necessarily know* that the executor is applying the assets to objects in conflict with his duty, he deals with him at his peril; and that a transfer or assignment, under such circumstances, will, in a court of equity, be set aside.

12. *Wilson* v. *Doster*, 7 Ired. 231.

This case declares that there is no doubt that an administrator may sell or pledge the assets, or discount a note belonging to the estate; and that a party who deals with him will get a good title, provided he deals *honestly;* (p. 232). But a party taking from the trustee a part of the trust estate in satisfaction of the *private debt of the trustee to him*, will not be protected.

13. *Petrie* v. *Clark*, 11 S. & R. 388.

An executor may, in some cases, with strict propriety, convert the assets to his own use, as where he has paid debts of the testator with his own money; (p. 387.) There was no question of collusion in this case. It turned solely on the question whether the assignee was a holder for value; (p. 388.)

14. *Field* v. *Schiefelin*, 7 John. Ch. 155.

This case turned on the questions of fact whether a guardian committed a breach of trust in the assignment of a bond and mortgage; and whether the plaintiff was a party to that breach of trust; (p. 153.)

The entire opinion of Chancellor Kent in this case, is a direct and powerful authority in favor of the Westboro Bank. After an elaborate review of the authorities, he declares that they all agree in this: that the purchaser is safe if he is *no party to any fraud* of the executor, and has no *knowledge or proof* that the executor intended to misapply the proceeds; or was, in effect, by the very transaction applying them to the extinction of his own private debt. *If he has no such proof or knowledge, he is not bound to inquire into the trust ;* (p. 160.)

15. *Williamson* v. *Branch Bank*, 7 Ala., 906.

This is a case of an application of the estate of a testator, under a sale on execution to satisfy the debt of an executor. It states the general rule, substantially as it is claimed to be in the brief filed for the Westboro Bank ; (p. 913).

16. *Dodson* v. *Simpson*, 2 Randolph, Va., 294.

This case declares the rule to be, that a purchaser from an executor, who has not been guilty of *fraud*, nor of such gross negligence as amounts to evidence of fraud, will be protected ; (p. 298).

17. *Colt* v. *Lasnier*, 9 Cow., 320.

There is nothing in this case to change the rule for which appellees contend. In case of a fair sale, the Court will never disturb the possession of a purchaser, because an executor has misapplied the proceeds. Citing *Potter* v. *Gardner*, 2 Wheat, 498, and other cases.

18. *Parker* v. *Gilliam*, 10 Yerg. 394.

In this case, the Court held that the administrator deliberately intended to commit a *fraud* in the disposition of the property ; and that the purchaser actively cooperated in the iniquity ; (p. 299).

19. *Garnet* v. *Macon*, 6 Call, Va., 361.

The principle of this decisien is, that if an executor does not sell in pursuance of his trust, but in violation of it, and the purchaser *knowing* this fact, aids him in its execution by making a contract, the purchaser will not be protected. *But the purchaser is not bound to make any* *inquiry*. The general power of the executor to sell, protects the purchaser in buying. But if he buy with notice that the sale is a breach of trust, the property remains charged with it; (p. 362).

20. *Graff* v. *Castleman,* 6 Rand, 204.

This case is in 5th Randolph. The absence of any personal interest of the executor in the estate, in this case, is regarded as important, (p. 200). The party took a transfer of the trust property and security, for money to be advanced to the private trade of the executor, a trade having *not the slightest connection with the estate of the testator*, *or the objects of the trust.*

The transaction was a purchase of shares in the New Orleans Water Works, and an agreement to advance, as the money should be wanted for carrying on the work. It was not a case of lending money and taking a security for its return; (p. 208).

21. *Rhame* v. *Lewis*, 13 Richardson, (S. C.) Eq. 270.

This case is no authority for the appellants. It is an authority directly the other way. It holds that any one may securely take *choses in action* from an administrator, either absolutely or conditionally, by any of the usual methods of legal or equitable transfer, *for value and in good faith*. But he who takes them, *knowing* that their alienation is not for the purposes of the trust, but for the private purpose of the administrator, takes them in *bad faith*, and is liable to account for them.; (p 299).

22. 3 *Sayles Stats. Ohio*, 1757.

This can have no application to the case at bar. The promissory notes in question are Illinois assets. The doctrine that movables follow the person, although it "still lingers on the pages of some of our most eminent text books, is discarded in practical jurisprudence."

Whart. Conf. Laws, Sec. 13, 342. The power of the executor under the Illinois law, is abundantly shown in appellee's brief.

23. *Saxon* v. *Barksdale*, 4 Dess. 521.

This is a case of a chattel specifically bequeathed. It seems to turn upon a statute. It is not in point.

24. 3 *Redfield on Wills*, 102 *and note.*

This citation relates to the right of an administrator to recover, in case a good cause of action is shown.

25. *Story on Partnership*, *sec.* 201, *a.*

This is not in point. It relates, not to the power of an executor to dispose of choses in action; but to the clearness of language required to make the general assets of the deceased person liable for the debts of a co-partnership, continued under the proper direction, after his death.

26. *In re Garland*, 10 *Vesey Jr.*, 110, 121, 122.

In this case Lord Eldon holds that the creditors of a trade which the testator has authorized to be carried on for the benefit of other persons, have not a claim as such creditors, against the distributed assets in the hands of the legatees. It does not touch the case at bar.

27. *Pitkin* v. *Pitkin*, 7 Conn. 307.

This case is like the preceeding, of *ex parte* Garland. It holds that the creditors of a firm continued after the testator's death, have no lien on his general assets, but are confined to the assets involved in the business.

28. *Burwell* v. *Mandeville's Ex'r.* 2 How. 560, 576.

This case involves, not the power of an executor to dispose of *choses in action*, but the question whether the general assets are liable for the debts of a co-partnership in which the testator has directed the continuance of a portion of his estate.

29. *Scholfield* v. *Eichelberger*, 7 Pet. 586.

This case contains nothing material to the present controversy.

30. *Lucht, Adm'r*, v. *Behrens*, 28 Ohio State, 231.

In this case the executor, although not authorized by the will, nor so far as appeared, by the consent of any one interested, continued the testator's business.

A person who loaned money to carry on this business, was held a creditor, not of the general estate, but of the executor. His right against the estate, if any, was to charge the property embarked in the business, by a proceeding in equity.

31. *Dunning, Trustee*, v. *Ocean Nat. Bank*, 61 N. Y. 497.

This case is not in point. The facts are not parallel to those in the present case, and the decision can have no application. According to the general rule, B. F. Renick will be regarded as acting in the capacity of an executor, and not in that of an independent trustee, for there is nothing in the case to compel the latter construction.

An executor, although always in some sense a trustee, will not be regarded as such in a distinctive sense, unless the duties imposed extend in time and scope entirely and distinctly beyond those of the mere settlement of the estate, and the distribution of the assets; or duties are imposed which clearly extend beyond the ordinary duties of the executor. A direction in a will, that certain shares should be kept increasing till the legatees came of age, will not constitute the person named for that duty a trustee, but only an executor.

3 Redf. Wills, 76, Ch. 2, Sec. 6, No. 22, 23.

The entire argument for appellants, is an attempt to revive the doctrine of *Gill* v. *Cubbitt*, 3 Barn. & Cres. 466, (A. D. 1824); which was overruled in *Goodman* v. *Harvey*, 4 Ad. & El. 870, (A. D. 1836). As is abundantly shown in the brief for appellees, the doctrine held by this Court is, that nothing but a participation in fraud by the purchaser, will vitiate a regular transfer of negotiable paper.

All the argument for appellants is answered by the fact that B. F. Renick, the executor, pledged the note in question, for the purpose of protecting and promoting an interest and enterprise expressly committed to his discretion by the will. There was an utter and absolute absence of fraud. But if there were fraud, the Westboro Bank in no sense participated in it, and had no notice or knowledge of it. No mere negligence or want of care could make the bank liable; but there was no negligence or want of care, on the part of the bank.

There was no occasion to refer to the will, to see whether the executor could transfer the paper. He had that power under the law, by virtue of his office. He had in like manner power to extend the time for payment. The reference to the agreement of extension, could impose on the bank no duty to make inquiry, even into the fact of the extension; much less into any matters foreign to it.

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